

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-16339-2023

Decided on:31.03.2023

Parveen Kumar

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Munish Gupta, Advocate for the petitioner

Sandeep Moudgil, J.

(1). By way of instant petition jurisdiction of this Court has been sought to be invoked under Section 439(2) Cr.P.C., for cancellation of regular bail granted to respondents No.2&3 vide order dated 15.03.2023 (Annexure P14) by the trial court in case FIR No.396 dated 20.08.2016 (Annexure P2) under Sections 420/467/468/471/120-B IPC (Sections 167/217/180/218 IPC added later on), registered at Police Station City Narnaul, District Mahendergarh.

(2). Prosecution case in nutshell is that on 20.8.2016 complainant Atam parkash asked the police to take action against the then Tehsildar Narnaul, the then Reader of Tehsildar Narnaul, Amar Singh, Prem Nath Gupta, Inderjeet Gupta, Parveen Gupta, Vivek Gupta, Rajesh Gupta, Amit Gupta, Ajay Gupta, Smt. Raj Rani Gupta and Om Parkash Girdawar and other accused for committing forgery after hatching a conspiracy. Complainant in his complaint has stated that in pursuance of the conspiracy, accused Prem Nath Gupta and Inderjeet Gupta alongwith other accused prepared forged orders by cutting, adding, interpolation, manipulation and substitution in zimni orders dated 27.11.2015, 18.3.2016 and 22.4.2016 passed by Assistant Collector 1st

Grade. On 20.11.2015 the case was adjourned to 21.12.2015. On 21.9.2015 written arguments were submitted by respondent No.2. Thereafter, the case was adjourned to 5.10.2015, 16.10.2015, 4.11.2015, 20.11.2015. Subsequently the file was taken up again on 20.11.2015. Arguments were heard on partition suit and case which was adjourned to 27.11.2015 was adjourned to 21.12.2015 by doing over writing in argument on behalf of remaining respondents. On 21.11.2015 a tampering and forgery was committed by the accused persons. On account of which in the aforesaid order the presence of counsel on behalf of complainant has been wrongly stated. In the order dated 20.11.2015 it can be seen that case was firstly adjourned for 27.11.2015 but subsequently by doing overwriting, the date of adjournment has been shown as 27.12.2015. In zimni order dated 18.3.2016 that endorsement of no objection was subsequently inserted by cutting the stamp of A.C 2nd Grade. On the basis of aforesaid information FIR was lodged against the accused persons.

(3). During investigation accused persons were found to be innocent. Later on the matter was inquired by DRO and SDO (Civil), Narnaul the complaint filed by complainant Atam Parkash was dismissed. The impugned orders were also sent to FSL Madhuban. In the aforesaid report, it was stated that overwriting and cutting has been made by the one and the same person. On the basis of aforesaid report, SIT was constituted. SIT concluded that no case under Sections 466,467,471 IPC is made out. It was concluded that only offences that can be made out against the accused are under sections 167,217,218 and 511 IPC.

(4). Counsel for the petitioner-complainant has submitted that the order dated 2.8.2022 passed by the Commissioner in the case in hand clearly

shows that the FIR has been rightly registered against the accused persons. He submitted that the bail has been granted to the accused persons, namely, respondents NO.2&3 in view of influence having been exercised by them since at the time of their production before the trial court, respondents NO.2&3 were accompanied by hundreds of lawyers and it was with great difficulty that the petitioner could convince a lawyer to represent him on account of huge pressure exerted by respondents No.2&3.

(5). Learned counsel further urged that even the Judicial Officer who granted bail to respondents NO.2&3 kept waiting for the accused persons in late hours to come present and file application so that the same can be considered as is evident from the fact that normally bail applications are entertained upto 3.00 pm whereas the bail application filed by respondents No.2&3 was entertained at 7.00 pm and that too without following the normal practice of issuing notice to the prosecuting agency which shows that the said Judicial Officer/Sessions Judge was also under the influence of respondents NO.2&3 and as such the bail granting regular bail to respondents No.2&3 is illegal and unsustainable in the eyes of law.

(6). A perusal of the order dated 15.03.2023 shows that as per the contention raised by counsel for the accused before the court below, the present case was lodged by the complainant in the year 2016. Cancellation reports have already been filed by the police. Since 2016 the accused during investigation have fully cooperated with the investigating agency. It is also on record that accused persons were found innocent twice as can be gathered from the cancellation reports filed by the police.

(7). Heard learned counsel for the petitioner and gone through the record.

(8). Before advertng to the merits of the case, this Court deems it appropriate to reproduce the relevant Section 437(6) CrPC, which reads as under:-

“Section 437. When bail may be taken in case of non-bailable offence:

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non- bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(9). This provision stipulates that if in a non-bailable offence triable by a Magistrate, the trial is not concluded within a period of sixty days from the first date fixed for taking evidence and the accused remains in custody during the whole period, then he becomes entitled for release on bail though such benefit can be denied to the accused if the trial Magistrate records reasons thereof.

(10). Though, there is no straight jacket formula to assess the application for grant or rejection of bail but determination of whether a case is fit for grant of bail or not involves balancing of numerous factors among which nature of offence, severity of punishment and *prima facie* view of the involvement of accused are of utmost importance. Very cogent and overwhelming circumstances or ground are required to cancel the bail already

granted. Ordinarily, unless a strong case based on any supervening event is made out an order granting bail is not be lightly interfered with under Section 439(2), Cr.P.C. While considering the petition for cancellation of bail, a Court shall bear in mind that:-

- a) the accused misuses his liberty by indulging in similar criminal activity,*
- b) interferes with the course of investigation,*
- c) attempts to tamper with evidence or witnesses,*
- d) threatens witnesses or indulges in similar activities which would hamper smooth investigation,*
- e) there is likelihood of his fleeing to another country,*
- f) attempts to make himself scarce by going underground or becoming unavailable to the Investigating Agency and*
- g) attempts to place himself beyond the reach of his surety, etc.*

(11). It is thus clear that when a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. It is not the case of the petitioner that the respondents have violated either of the terms of the guidelines framed above.

(12). This Court is of the considered view that the petitioner has failed to highlight any cogent or overwhelming circumstances or grounds which is a *sine qua non* for seeking cancellation of bail. It is not the case of the petitioner that the respondent has misused the liberty or had comported themselves in any manner in violation of the conditions imposed on him. The power of cancellation of bail ought to be exercised with extreme care and circumspection; and such cancellation cannot be ordered merely for any

perceived indiscipline on the part of the accused before granting bail. In other words, the powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused and in fact, in a case where bail has already been granted, its upsetting under Section 439(2) CrPC is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case. This view of mine also has the support of a decision rendered by the Supreme Court in **Bhuribai vs. State of Madhya Pradesh in criminal appeal No.1972 of 2022.**

(13). In the present case, it is not the case of the petitioner that the respondent No.2 & 3/accused had misused the liberty or had violated any of the conditions as envisaged under Section 439 Cr.PC. Merely because respondents No.2 & 3 are *prima facie* shown to be involved in the case in terms of the charges framed against them, is not a circumstance to be construed adversely against to denude them the benefit of beneficial statutory provisions of Section [436](#)(7) CrPC. Moreover, neither there is failure of the prosecution to examine material witnesses during the period of 60 days nor is there any ground taken that the release of respondents No.2 & 3-accused may affect testimony of the witnesses to be examined by the prosecution. Respondent No.2 & 3 had been in custody since 01.03.2023, which clearly violates the mandate provided under Section 437(6) that the trial has to be concluded within sixty days from the first date fixed for prosecution evidence. During this entire period, for no fault of the respondents No.2&3, the case was adjourned time and again. Clearly enough, time was sought by the prosecuting agency to produce the evidence.

(14). Considering the aforesaid submissions and the language of Section 437(6) CrPC and also in view of the decision of the Apex Court in **Bhuribai**, this Court is of the view that Section 437(6) does not give an absolute right to the accused to be released on bail, rather a harmonious construction of the Code with other acts needs to be taken into consideration to maintain a balance between individual liberty and the interest of justice, because the very object of introducing such provisions is to speed up the trial and to ensure that the accused is not unnecessarily harassed and also keeping the accused behind bars for an indefinite period amount to violation of Article 21 of the Indian Constitution. Further the Supreme Court in **Hussainarakhatoon & others versus Home Secretary, State Of Bihar (AIR 1979 SC 1369)** provided a broad definition of Article 21 of the Constitution and stated that a speedy trial is a fundamental right of every citizen.

(15). In the present case, much stress has been placed by counsel for the petitioner on the order dated 2.8.2022 passed by Commissioner shows that Commissioner in his order has nowhere advocated that a criminal action for the forgery, manipulation and irregularities should be initiated against the respondents No.2&3. When order of Commissioner is read as a whole, it can be concluded that he is of the view that cutting in the impugned order that has been carried out are mere irregularities which occurred without any criminal intention. The aforesaid interpretation is also justified from the fact that Commissioner in its order has merely set aside the impugned order and remanded the matter to AC 2nd Grade for deciding the matter afresh. The civil writ petition No.24645 of 2022 decided on 27.10.2022 is also of no help to the complainant because if Court of Financial Commissioner was of the view that

tampering is an outcome of forgery, then he would have ordered action against the wrongdoers by invoking Section 195 Cr.P.C. No such action has been taken by the Commissioner therefore, the complaint filed by the complainant is not maintainable and hit by provisions of Section 195 Cr.P.C.

(16). From the records, it can be seen that the petitioner even filed CRM-M-12576-2023 seeking transfer of bail application on the ground that there is no likelihood that fair and impartial decision will be taken by the Sessions Judge. The said petition came up before a Coordinate Bench of this Court which was dismissed on the ground that the submission is misconceived as there is no allegation against the court before whom bail application is listed on that day except only an apprehension that the respondents No.2&3 may prevail upon the learned Sessions Judge which contention was rejected being not acceptable and as such the case was not transferred outside the district on the basis of mere apprehension.

(17). Now the question that crop up for consideration is whether the petitioner is right in alleging aspersions against the Judicial Officer or the Sessions Judge who had granted bail allegedly on insufficient grounds or was justified in passing such an order. Granting of bail to accused persons pending trial is one of the significant judicial functions to be performed by a Judicial Officer.

(18). In the instant case, the State did not allege that the accused persons who had been granted bail would abuse such concession or may abscond.

(19). It is an admitted case that the respondents No.2&3 have been found to be innocent thrice as can be gathered from the cancellation reports

and the report of SIT. Though SIT has concluded that only offence under sections 167, 217, 218 and 511 IPC are made out against the accused, no case of investigation or recovery has been made out by the prosecution against the accused.

(20). It is also important to note that the petitioner made an unsuccessful attempt to have the bail application transferred to another district. Though he filed the application for transfer before this Court, he did not press for stay of the proceedings. It is apparent that a frivolous transfer application was filed with the intent to create a sense of pressure so as to influence the trial judge not to grant bail to the accused persons.

(21). I am of the considered view that while exercising control over subordinate judiciary under Art. 235 of the Constitution, the High Court is under a Constitutional obligation to guide and protect subordinate judicial officers. An honest and strict judicial officer is likely to have adversaries, if complaints are entertained in trifling matters and if the High Court encourages anonymous complaints, no judicial officer would feel secure and it would be difficult for him to discharge his duties in an honest and independent manner. It is imperative that the High Court should take steps to protect honest judicial officers by ignoring ill-conceived or motivated complaints made by unscrupulous lawyers and litigants.

(22). In **K.P. Tiwari v. State of Madhya Pradesh, AIR 1994 SC 1031**, where the High Court reversed the order passed by the lower court making remarks about interestedness and motive of the lower court in passing the unmerited order, the Supreme Court observed that one of the functions of the

higher court is either to modify or set aside erroneous orders passed by the lower courts.

(23). Our legal system acknowledges fallibility of judges. It has to be kept in mind that a subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure -- contestants and lawyers breathing down his neck. Every error, however gross it may be, should not be attributed to improper motives. The High Court has a responsibility to ensure judicial discipline and respect for the judiciary from all concerned. No greater damage can be done to the administration of justice and to the confidence of the people in the judiciary if the higher courts express lack of faith in the subordinate judiciary for some reason or the other. That amounts to destruction of judiciary from within.

(24). In the light of the above discussion, this Court is fully convinced that this petition is an attempt to scandalize the trial court and attributing motive against the Judicial Officer in passing the impugned order, a trend rising now-a-days which needs to be nipped in the bud. Therefore, this Court does not find any illegality in the order passed by the trial court in granting regular bail to the accused person.

(25). Accordingly, this petition is dismissed with cost of Rs.50,000/- imposed on the petitioner to be deposited in the Punjab and Haryana High Court Bar Association, Chandigarh.

31.03.2023

V.Vishal

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

(Sandeep Moudgil)
Judge

Yes/No
Yes/No