

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25790-2022

Date of decision : 01.09.2022

Anil Taneja

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Sanchit Punia, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana.

Mr. Pankaj Mehta, Advocate
for respondent No.2.

Mr. Virender Singh Punia, Advocate
for respondent No.3.

PANKAJ JAIN, J. (ORAL)

This is a petition under Section 439(2) Cr.P.C. read with Section 482 Cr.P.C. seeking cancellation of anticipatory bail granted to respondents No.2 and 3 in case bearing FIR No.1190 dated 29.12.2021, registered under Sections 379 and 406 of IPC (Sections 467, 468, 471 and 420 of IPC were added later on).

2. While granting anticipatory bail, the trial Court observed as under:-

“xx xx xx

7. It is not a disputed fact that earlier, the FIR was registered against the applicants-accused under Sections 379 and 406 IPC. It is also an admitted fact that both the applicants-accused were admitted to anticipatory bail vide orders dated 18.02.2022 and 25.03.2022 by the court of Shri G.S.Wadhwa, the then

learned ASJ, Hisar. Subsequently, offences under sections 467, 468, 471 and 420 IPC were added in the FIR. In the FIR, the complainant has alleged that both the applicants-accused were his employees whereas in the bail application, it is the plea of the applicants-accused that they had jointly entered into a partnership with the complainant to run the colleges. From the overall perusal of the facts, it appears that dispute between both the parties pertain to the settlement of accounts, which is further evident from the status report filed by the police as per which, the applicants-accused have rendered the accounts of Rs.7,89,000/- and an amount of Rs.11 lacs is still to be recovered from them. It is also to be noted here that an FIR No.1015 dated 08.11.2021 under sections 294, 323, 342, 506, 34 IPC was also got registered by the applicant-accused Dinesh Kumar against the co-accused Rajpal Poonia and the present complainant Anil Taneja, with the allegations that they had abused him, caused injuries to him and also got his signatures upon some blank papers forcibly.

8. So far as plea of prosecution that custody of applicants is required to effect recovery of Rs.11 lacs, the same is without any force. In **Dilip Singh vs. State of M.P.(Criminal appeal No.53 of 2021) (decided on 19.02.2021)**, Hon'ble Supreme Court held that it is well settled by a plethora of decision of this court that the criminal proceedings are not for realization of disputed dues. It is further held that a criminal court exercising a jurisdiction to grant bail/ anticipatory bail is not excepted to act as a recovery agent to realise the dues of the complainant and that too, without any trial.”

3. The plea raise is that without considering the fact that the amount, the receipt books are yet to be recovered from the accused, concession of anticipatory bail has been granted.

4. Counsel for the petitioner does not dispute the fact that so far as quantum of amount is concerned, even the complainant is not sure of the same.

5. I have heard counsel for the parties.

6. It is trite law that bail cannot be denied on account of recovery of money under custodial interrogation cannot be utilized to recover the money.

7. Parameters with respect to cancellation of bail are no more *res-integra* and have been well settled by the Supreme Court in the case of ***Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 SCC 272.***

Para No.12 of the aforesaid judgment reads as under :-

12. In State (Delhi Admn.) v. Sanjay Gandhi, 1978 (2) SCC 411 : AIR 1978 Supreme Court 961 this Court observed rejection of bail when bail is applied for is one thing; cancellation of a bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail once granted. That is because cancellation of bail interferes with the liberty already secured by the accused either on the exercise of discretion by the court or by the thrust of law. This Court, therefore, observed that the power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. That does not mean that the power though extraordinary in character must not be exercised even if the ends of justice so demand.”

8. Similarly the Supreme Court in the case of ***Mehboob Dawood Shaikh Vs. State of Maharashtra, (2004) 2 SCC 362*** held in

the following manner in para 7 and 8 :-

7. *It is trite law that the considerations for grant of bail and cancellation of bail stand on different footings. By a majority judgment in Aslam Babalal Desai v. State of Maharashtra, 1993 (1) RCR (Criminal) 600 (SC) : 1992(4)SCC 272 the circumstances when bail granted can be cancelled were highlighted in the following words:*

"11. On a conjoint reading of Sections 57 and 167 of the Code it is clear that the legislative object was to ensure speedy investigation after a person has been taken in custody. It expects that the investigation should be completed within 24 hours and if this is not possible within 15 days and failing that within the time stipulated in clause (a) of the proviso to Section 167(2) of the Code. The law expects that the investigation must be completed with dispatch and the role of the Magistrate is to oversee the course of investigation and to prevent abuse of the law by the investigating agency. As stated earlier, the legislative history shows that before the introduction of the proviso to Section 167(2) the maximum time allowed to the investigating agency was 15 days under sub-section (2) of Section 167 failing which the accused could be enlarged on bail. From experience this was found to be insufficient particularly in complex cases and hence the proviso was added to enable the Magistrate to detain the accused in custody for a period exceeding 15 days but not exceeding the outer limit fixed under the proviso (a) to that sub-section. We may here mention that the period prescribed by the proviso has been enlarged by State amendments and wherever there is such enlargement, the proviso will have to be read accordingly. The purpose and object of providing for the release of the accused under sub-section (2) of

Section 167 on the failure of the investigating agency completing the investigation within the extended time allowed by the proviso was to instill a sense of urgency in the investigating agency to complete the investigation promptly and within the statutory timeframe. The deeming fiction of correlating the release on bail under sub-section (2) of *Section 167* with Chapter XXXIII, i.e. *Sections 437* and *439* of the Code, was to treat the order as one passed under the latter provisions. Once the order of release is by fiction of law an order passed under *Section 437(1)* or (2) or *Section 439(1)* it follows as a natural consequence that the said order can be cancelled under sub-section (5) of *Section 437* or sub-section (2) of *Section 439* on considerations relevant for cancellation of an order thereunder. As stated in ***Raghubir Singh v. State of Bihar, 1986 (4) SCC 481***, the grounds for cancellation under *Sections 437(5)* and *439(2)* are identical, namely, bail granted under *Section 437(1)* or (2) or *Section 439(1)* can be cancelled were (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."

8. *It is, therefore, 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. Rejection of bail stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to."*

9. Keeping in view the dictum of law laid down by the Apex Court and the fact that the petitioner has not been able to make out a case within the parameters of the law laid down by the Apex Court, the present petition is dismissed being without merit.

10. Ordered accordingly.

सत्यमेव जयते

(PANKAJ JAIN)
JUDGE

01.09.2022

Dinesh

Whether speaking/reasoned

Yes

Whether Reportable :

No