
Before Ranjit Singh, J.

RAJESH KUMAR,—*Petitioner*

versus

NIHAL CHAND AND ANOTHER,—*Respondents*

CRIMINAL MISC. NO. 7448/M OF 2005

15th December, 2006

Indian Penal Code, 1860—S. 439 (2)—A woman committing suicide after 5 years of marriage—F.I.R. u/s 304-B/34 IPC—Deceased admitting in dying declaration that she poured kerosene on herself and no one is to be blamed—Trial Court while relying on dying declaration granting bail—Challenge thereto—Trial Court giving detailed and elaborate reasons while granting bail—No perversity in the order—No cogent or overwhelming reasons made for cancellation of bail—Petition dismissed.

Held, that the allegation in the present F.I.R. would reveal crime to be a heinous but Sessions Court has given very detail and elaborate reasons while granting the concession of bail. This order allegedly cannot be faulted on the ground that it is an order granting bail without reasons. The basic allegation of the petitioner to urge that the order passed in this case is arbitrary is on the ground that the Court has wrongly relied upon the dying declaration. Since this document is forming part of the challan, it would not be fair to make any comment on the authenticity of this document. That may also amount to touching the merits of the case which need to be avoided at this stage. It is for the parties to prove this document and the same would be either relied upon or discarded depending upon evidence led before the trial Court when the trial commences. However, at this stage, it cannot be said that any such material was to be ignored or was not to be considered. It would not be possible to say that consideration of this material has resulted in order being arbitrary or illegal. There is no perversity noticed in the impugned order. In the alleged dying declaration, the deceased has stated that she poured kerosene herself and no one is to be blamed. No cogent or overwhelming reasons are made out for cancellation of bail.

(Paras 10 & 11)

Baldev Singh, Senior Advocate with Sudhir Sharma, Advocate
for the petitioner.

R. S. Cheema, Senior Advocate with R. K. Trikha, Advocate *for
respondent No. 1.*

Yashwinder Singh, A.A.G. Haryana.

JUDGEMENT

RANJIT SINGH, J.

(1) This order will dispose of CRM Nos. 7448-M of 2005, 24616-M of 2005 and 41927-M of 2005.

(2) These petitions have been filed seeking cancellation of bail granted to respective respondents Nanak Chand, Jeevni Devi and Pawan Gupta. F.I.R. No. 271 under Sections 304-B/34 IPC was registered at Police Station Taoru, District Gurgaon on 3rd December, 2004 at the instance of Phool Chand petitioner. He is father of an unfortunate girl named Sushma, who was married to Pawan Kumar of village Taoru on 2nd December, 1999. Stating that the dowry according to the capacity of the complainant was given but still the respondents' family was not satisfied and raised demands, which lead his daughter to commit suicide. Giving details of dowry articles demanded by the respondents from time to time, the complainant has disclosed that on 2nd December, 2004 which was the marriage anniversary of his daughter, he received a telephonic message from his son-in-law, Pawan Kumar, that balance of Rs. 2 lacs be sent. Next morning, the complainant allegedly received a telephone call from his daughter that her husband wanted some writing under pressure and that complainant should send the balance amount. At about 10 p m complainant received a message from his son-in-law that his daughter was in hospital. Reaching Taoru Government Hospital, complainant found Sushma in a burnt condition from where she was referred to Gurgaon. As per the complainant, he had gone to the house of the respondents and had noticed certain tell tale marks about the incident of burning of his daughter and accordingly the present F.I.R. was lodged by him. Since Sushma had died an unnatural death within a period of seven years of her marriage, the case under Section 304-B IPC was registered. However, on protest made by the complainant, offence under Section 302 IPC was also added. It is

disclosed in the petition that Nanak Chand and Pawan Kumar were arrested on 22nd December, 2004 whereas Jeevni Devi was arrested on 2nd January, 2005. Grievance is that remaining accused were not arrested because of the influence of the accused persons. It is also disclosed that even after arrest, Nanak Chand remained admitted in the hospital till he was released on bail by the Additional Sessions Judge, Gurgaon on 15th January, 2005, which is impugned in this petition. Case set up is that the investigation was at very initial stage when the Additional Sessions Judge granted the concessions of bail unmindful of the serious allegations that were made in the F.I.R. When this bail was allowed, four accused persons were yet to be arrested. Making reference to all these facts, it has been urged that this would reveal an arbitrary exercise of discretion, which cannot be termed as judicious. Allegations of misuse of concession of bail by Nanak Chand and his son Bharat Bhushan *alias* Bunty have also been made by disclosing that they had openly threatened the petitioner and are being told to stop pursuing the case. Reference has also been made to some news items appearing in 'Times of India' dated 18th December, 2004.

(3) Subsequently, Jeevni Devi and Pawan Kumar were also granted bail by the Additional Sessions Judge, Gurgaon on 10th February, 2005 and 8th June, 2005 respectively, which was challenged on identical grounds as contained in the above noted criminal petitions. Notices in these petitions were also issued. Replies have been filed on behalf of respondents. They have controverted the insinuatory allegations made in the petitions and have justified the order of Additional Sessions Judge directing the release of respective respondents on bail.

(4) Mr. Baldev Singh, learned senior counsel for the petitioner has very vehemently submitted that the present case is clear example of wrongful and illegal use of discretion in granting bail to the respondents. He has further made allegation of misuse of concession of bail by the respondents and has accordingly submitted that bail granted to the respondents needed to be cancelled. The counsel would mainly emphasize that the order passed by the Additional Session Judge, on the face of it, is arbitrary and illegal order, which has been passed without assigning any cogent reason and as such deserves to be interfered with. He would take serious objection to the action of

Additional Sessions Judge in relying on dying declaration allegedly made by deceased Sushma, which is stated to be a manufactured record by one doctor and saw the light of the day only after 20 days of the incident. The counsel, as such, would urge that the Court instead of appreciating this aspect of the document being manufactured has relied on this and has bailed on the respondents revealing illegal and arbitrary approach.

(5) Mr. R. S. Cheema, learned senior counsel for respondents, on the other hand, would controvert all the submissions and has pointed out that this marriage was five years old when this incident took place. He would further submit that though the entire family of respondents was involved but after investigation, only three persons have been challaned out of seven named by the complainant. Pointing out the legal position, Mr. Cheema would urge that only perverse order granting bail may call for interference and that considerations for grant of bail are entirely different from one, which are relevant for cancellation of the bail once granted. As per the counsel, no perversity is seen in the impugned order, which even is not the allegation made in the petition. Learned counsel would see nothing wrong in the Court relying on dying declaration, exhibited as R2 in contrast to the submissions made by the counsel for the petitioner. Referring to Annexure P2, Mr. Cheema would say that while making complaint in this regard, the petitioner never raised any objection to the dying declaration.

(6) While seeking cancellation of bail, counsel for the petitioner has placed very strong reliance on the case of **Puran versus Ram Bilas and another (1)**. This was a case where appeal was filed against the order passed by the High Court cancelling the bail granted to the petitioner in the said case by the Additional Sessions Judge. While declining to interfere in the order passed by the High Court, the Hon'ble Supreme Court had made certain observations, which could legally be taken into consideration for cancellation of bail. It is in this context that Mr. Baldev Singh, learned senior counsel has urged that arbitrary and wrong exercise of discretion by the trial Court has to be corrected. As made out by the counsel, Hon'ble Supreme Court, in this case, has observed that one ground

for cancellation of bail would be where by ignoring material and evidence on record, a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order was termed against principles of law by the Hon'ble Supreme Court and also that interest of justice would also require that such a perverse order be set aside and bail be cancelled. Further observing that it is to be remembered that such offences are on the rise and have a very serious impact on the society, it was held that an arbitrary and wrong exercise of discretion by the trial court has to be corrected. The Hon'ble Supreme Court also referred to various other cases, which would regulate the consideration of cancellation of bail. Observations of the Hon'ble Supreme Court may need a notice and these are :—

“Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in **Gurcharan Singh versus State (Delhi Admn.)**

(7) Referring to the decision of Gurcharan Singh, the Hon'ble Supreme Court observed that the approach should be to see whether the order granting bail was initiated by any serious infirmity for which it is right and proper for the High Court, in the interest of justice, to interfere. It is noticeable, as such that basically perversity would be a ground to interfere in the order granting bail.

(8) Mr. Baldev Singh would then refer to a case of **Jagan Nath versus State of Haryana (2)** where bail granted by the Sessions Judge, Sirsa under similar circumstances was cancelled. While cancelling the bail, this Court has observed that having regard to the seriousness, nature and character of the evidence and also to the fact that the unnatural death had taken place in the house of respondents, the Sessions Judge did not exercise his discretion properly in releasing the respondents on bail. Mr. Cheema, however, would counter the position by referring to the law laid down by the Hon'ble Supreme

Court in the case of **Dolat Ram and others** *versus* **State of Haryana**, (3) where the order passed by this Court cancelling the bail was set aside by the Hon'ble Supreme Court. Mr. Cheema has also placed reliance upon **Subhendu Mishra** *versus* **Subrat Kumar Mishra and another**, (4) **Bhagirathsinh Judeja** *versus* **State of Gujarat** (5) and Puran's case (*supra*), which were referred by the counsel for the petitioner.

(9) It is not in dispute that rejection of bail in non-bailable case at the initial stage and the cancellation of bail already granted has to be considered and dealt with on different basis. This was so held in the case of Dolat Ram (*supra*). This was a case where Additional Sessions Judge, Rohtak had granted bail in a case of an offence under Section 304-B IPC which was cancelled by this Court. (*See State of Haryana versus Dolat Ram* (6)). While setting aside the order passed by this Court, the Hon'ble Supreme Court held :—

“Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already 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 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.”

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- (3) (1995) 1 S.C.C. 349
(4) 2000 S.C.C. (Cri.) 1508
(5) AIR 1984 S.C. 372
(6) 1995 (2) R.C.R. (Criminal) 304

(10) Thus, very cogent and overwhelming circumstances are necessary for an order directing cancellation of the bail already granted. As observed, generally speaking the grounds for cancellation of bail broadly are interference or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. As held in *Puran's case* (supra) one such ground on which cancellation of bail can be ordered is where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. No doubt, the allegation in the present F.I.R. would reveal crime to be a heinous but Sessions Court has given very detail and elaborate reasons while granting the concession of bail. This order allegedly cannot be faulted on the ground that it is an order granting bail without reasons. Even the counsel for the petitioner has mainly urged that this was an illegal and arbitrary exercise of discretion and as such is required to be corrected by this Court. The main emphasis of the counsel was that the Sessions Court has wrongly relied on the dying declaration in passing the impugned order. This document, as per the counsel, was the most a defence of the respondents and was required to be seen as such. The counsel has also urged that the police is lending a helping hand to respondents accused as Pawan Kumar is an Advocate. On the other hand, Mr. Cheema has pointed out that dying declaration is forming part of the challan and is thus before the Court and hence could be taken into consideration for grant of bail etc. He has pointed out that the doctor, who had recorded the dying declaration was proceeded against departmentally and was exonerated after proper enquiry. The counsel would draw support from the observations of the Hon'ble Supreme Court in the case of **Bhagirathsinh Judeja** (supra) to say that even where a *prima facie* case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence. In **Subhendu Mishra's case** (supra) referred to by the learned counsel for the respondents, the Hon'ble Supreme Court held that principles laid down in **Dolat Ram's case** (supra) ought not to be ignored and High Court order cancelling the bail in this case was held unsustainable. View of Hon'ble Supreme Court in *Dolat Ram's case*

(supra) that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted was referred to with approval in the case of **Subhendu Mishra** (supra).

(11) The basic allegation of the petitioner to urge that the order passed in this case is arbitrary is on the ground that the Court has wrongly relied upon the dying declaration. Since this document is forming part of the challan, it would not be fair to make any comment on the authenticity of this document. That may also amount to touching the merits of the case which need to be avoided at this stage. It is for the parties to prove this document and the same would be either relied upon or discarded depending upon evidence led before the trial Court when the trial commences. However, at this stage, it cannot be said that any such material was to be ignored or was not to be considered. It would not be possible to say that consideration of this material has resulted in order being arbitrary or illegal. It is otherwise rightly pointed out by Mr. Cheema that there is no allegation in the petition that the impugned order is perverse in any manner. It is required to be noticed that Section 439 (2) Cr. P.C provide power to cancel bail and such jurisdiction is to be exercised on the principle as set out in various judgements noticed above in appropriate case. There is no perversity noticed in the impugned order. In the alleged dying declaration, the deceased has stated that she poured kerosene herself and no one is to be blamed. No cogent or overwhelming reasons are made out for cancellation of bail. Seriousness of the offence, advanced as reason in cancelling the bail in the case of **Dolat Ram** (supra) did not receive approval of the Hon'ble Supreme court as it was observed that the High Court appeared to have overlooked the distinction of the factors relevant for rejecting bail in non bailable case in the first instance and cancellation of bail already granted. Order cancelling the bail in the case of **Jagan Nath** (supra) relied upon by the counsel for the petitioner where the bail was cancelled having regard to seriousness and nature of evidence may not appear to be in line with law laid down by the Supreme Court. No sufficient grounds under law have been made for interference in the impugned order.

(12) These petitions are dismissed.