

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CrI. Misc. No. M-1666 of 2024

Date of Decision: January 12, 2024

State of Haryana

.....Petitioner

versus

Indraj

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Ms. Geeta Sharma, DAG Haryana
for the petitioner

Harpreet Singh Brar, J. (Oral)

1. Prayer in the petition under Section 439(2) read with Section 482 Cr.P.C. is for cancellation of anticipatory bail granted to the respondent vide order dated 14.07.2023 passed by learned Additional District and Sessions Judge, Rohtak in case FIR No. 251 dated 03.06.2023 registered under Section 387/120-B IPC at Police Station Kalanaur, District Rohtak.

2. Learned counsel for the petitioner *inter alia* contends that initially the FIR was registered against three persons. The respondent was involved in the present case on the basis of disclosure statement made by one accused namely Gopi Shyam. Thereafter, another accused namely Pushpender also made a disclosure statement and indicated the involvement of the respondent in the alleged occurrence. Learned Additional Sessions Judge, Rohtak has granted interim anticipatory bail vide order dated 10.07.2023. The Investigating Officer has filed reply and pleaded although the mobile phone required in the investigation has been recovered from the respondent, however, the respondent is not cooperating with

the investigation. Learned Additional Sessions Judge, Rohtak has allowed the anticipatory bail granted to the respondent on the ground that the respondent has joined the investigation and has got his mobile phone recovered.

3. The prayer for cancellation of anticipatory bail has been made on the ground that there is no data regarding conversation of the respondent with his accomplices and it will take time to retrieve the data through the forensic laboratory, as such by that time the accused may commit other crimes of similar nature as he was earlier involved in FIR No. 57 dated 21.02.2011 registered under Sections 148/149/353/224/302/307/395 IPC and Section 25 of Arms Act at Police Station Hodal, District Palwal.

4. Having heard learned counsel for the petitioner and perusing the record, it transpires that the present petition has been filed on flimsy and fragile grounds. The offence under which the FIR is registered against the respondent is punishable with imprisonment upto seven years. The Hon'ble Supreme Court in ***Satender Kumar Antil vs. Central Bureau of Investigation and another (2022) 10 SCC 51*** has held that for offences punishable with imprisonment upto seven years, bail applications may be decided without the accused being taken into custody and promotes granting interim bail till the bail application is decided. Further, in ***Arnesh Kumar vs. State of Bihar (2014) 8 SCC 273***, the Hon'ble Supreme Court has opined that arrest must only be made in offences punishable with seven years or less if there is a likelihood of the accused impeding the progress of the trial by tampering with the evidence or threatening a witness. In absence of such considerations, incarceration of the accused will serve no purpose except overcrowding of jails. It appears that learned Public Prosecutor has recommended to file the present petition seeking cancellation of bail granted to

respondent in a mechanical manner without application of mind and such a whimsical and capricious approach is required to be depreciated. Existence of cogent and overwhelming circumstance is a *sine qua non* for cancellation of bail, which is completely missing in the instant case. This cavalier and cursory approach with which the State has approached cancellation of bail cannot be appreciated as the same has a direct and rather serious impact on the liberty of the accused.

5. The scope and power of the judicial review of an order granting bail has been illustrated in *Dolat Ram and others vs. State of Haryana, (1995) 1 SCC 349* as follows:-

- (i) interference or attempt to interfere with the due course of administration of justice;*
- (ii) evasion or attempt to evade the due course of justice;*
- (iii) abuse of the concession granted to the accused in any manner;*
- (iv) possibility of the accused absconding;*
- (v) likelihood of/actual misuse of bail;*
- (vi) likelihood of the accused tampering with the evidence or threatening witnesses.*

6. It is a trite law that while exercising the power of judicial review, the scope of interference in an order granting bail is quite narrow. However, the Courts are under obligation to ensure that a fine balance is maintained between the precious right of the accused enshrined under Article 21 of the Constitution of India and the rights of the victim and society.

7. In view of the above, the present petition is dismissed with costs of Rs. 10,000/- to be deposited with the Poor Patients Welfare Fund, PGIMER Chandigarh.

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8. Registry is directed to send a copy of this order to the Director of Prosecution, Haryana to take steps towards sensitization of its officers to ensure that filing of appeals before higher Courts is not done in a mechanical fashion which do not meet the objective standard of reason and justice.

(HARPREET SINGH BRAR)
JUDGE

January 12, 2024

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No