
(2012) 06 RAJ CK 0013

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1290 of 2012

Abdul Gafoor

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 436, 437(5), 439(2)
Penal Code, 1860 (IPC) — Section 120B, 380, 448, 454, 467

Citation : (2012) 06 RAJ CK 0013

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Dharmendra Surana, for the Appellant; A.R. Nikub, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Sandeep Mehta

1. The Instant miscellaneous petition has been preferred by the petitioner challenging the order dated 8.5.2012 passed by the learned Sessions Judge, Jodhpur in Cr. Misc. Case No. 265/2012 (State Vs. Abdul Gafoor) whereby the learned Sessions Judge has directed cancellation of the bail granted to the petitioner in relation to the F.I.R. No. 169/2011 registered at P.S. Pratapnagar, Jodhpur. The petitioner is an accused in the aforesaid F.I.R. which was initially registered for the offences u/s 454, 380 and 448 I.P.C. The police upon initial investigation found that the petitioner was responsible only for the offence u/s 448 I.P.C. and accordingly, the investigation officer released him on bail exercising the powers u/s 436 Cr.P.C. as the offence was a bailable one. Subsequently further investigation carried out by the police revealed the commission of offences under Sections 454, 467, 468, 471 and 120B I.P.C. Upon disclosure of these non-bailable offences, the State through the learned Public Prosecutor moved the Sessions Judge, Jodhpur u/s 439(2) Cr.P.C. seeking cancellation of the bail granted to the petitioner as stated above. The application

so moved by the State was accepted by the learned Sessions Judge, Jodhpur by the order dated 8.5.2012 and the bail bonds executed by the petitioner before the Investigating Officer were directed to be cancelled. Now, the petitioner has approached this Court challenging the order dated 8.5.2012 whereby his bail bonds have been directed to be cancelled by the learned Sessions Judge, Jodhpur in the cancellation application preferred by the State.

2. Learned counsel for the petitioner placing reliance on a decision of this Court reported in the case of Chandra Pal Singh Choudhary Vs. Vijit Singh & Anr. reported in 2009 (1) RLW 693 contended that bail once granted to the accused for a lesser or a bailable offence cannot be cancelled merely on the ground that the subsequent investigation reveals a graver or a non-bailable offence. Learned counsel relied on the principle enunciated by this Court in the aforesaid decision at para 47 of the judgment:-

47. Otherwise too, if a person is released on bail by police in bailable offences and during investigation a new offence or offences which are non-bailable are added, the bail already granted in bailable offences shall enure to the benefit of the accused respondent even after adding a non-bailable offence.

48. This High Court in the case of Shukpal Vs. State of Rajasthan, 1988 (1) RLW 283 held that:-

When a person is on anticipatory bail and some new offences have been added during investigation, then police cannot arrest an accused by adding a non-bailable offence. The police must seek an order from the Court for cancellation of bail already granted to a person.

49. In the case of Gheesya & Ors. vs. State of Rajasthan, RLR 1988 (2) 307, it has been held that:-

The principle that when a person is released on bail or released on anticipatory bail, he cannot be arrested if another offence is found to have been committed by him at the time of investigation of the case is well settled and if the Court considered it proper then the bail granted can be cancelled u/s 437(5) and Section 439(2) Cr.P.C. So far this principle is well established. However, it can be said that the ground for cancellation of bail should not be merely that a graver offence is found to have been committed as a result of the investigation but should be something different, such as that the accused is likely to abscond, is likely to tamper with the evidence or that he is mis-using his liberty etc.

3. He thus argued that as the law laid down by this Court is well settled that merely on the addition of a graver offence at the subsequent stage of investigation, the bail once granted to the accused cannot be cancelled, hence the instant miscellaneous petition be accepted and the order impugned be quashed as the same amounts to an abuse of the process of the court.

4. Upon consideration of the arguments advanced at the Bar and after going through the order impugned, it is apparent that initially the Investigating Officer

granted bail to the petitioner u/s 436 Cr.P.C. as the offence which was being disclosed against the petitioner was u/s 448 IPC which is a bailable offence. Subsequent investigation revealed graver offences i.e. under Sections 454, 467, 468, 471 and 120B IPC as it was revealed on investigation by the I.O. that the petitioner forged a rent note. Upon disclosure of such facts, the cancellation application was moved before the Sessions Court and the learned Sessions Judge has accepted the application by the order impugned.

5. In the opinion of this Court the view expressed by the Single Bench of this Court in the case of Chandra Pal Singh Choudhary's case referred (supra) cannot be taken as laying down correct law. Another Single Bench of this Court in the case of Mool Chand Vs. S.H.O. P.S. Renwal, Jaipur reported in 2009 (2) Cr.L.R. (Raj.) 1027 considering the same question of law, while relying upon a decision of the Apex Court in the case of Prahlad Singh Bhati Vs. N.C.T. Delhi and Another, held as below:-

8. So far as the case law relied upon by the counsel for the petitioners in respect of proposition, that even if graver offence is added after grant of bail of the accused-persons then the bail once granted should not be cancelled unless he has misused the liberty in any manner, as held in the case of Prabhu (supra), Vijendra (supra) and Sita Ram Singh (supra) is concerned, it would suffice to say that the Hon'ble Supreme Court has laid down in the case of Prahlad Singh Bhati Vs. N.C.T. Delhi, 2001 (2) RCR (Cri) 377 that on bail having been granted to an accused person and if subsequently a graver offence has been charged/added then the accused has to seek fresh bail. The benefit of bail granted earlier to the accused is not available to him in the said changed circumstances. In other words, with the change of nature of offence, the accused becomes dis-entitled to the liberty granted to him in relation to a minor offence, if the offence is altered to an aggravated crime.

6. In view of the dictum of their lordships of the Supreme Court in the case of Prahlad Singh Bhati's case (supra) there remains hardly any scope for accepting the argument based on the decisions of the Single Benches of this Court in the case of Gheesya & Ors. Vs. State of Rajasthan reported in RLR 1988 (2) 307 and Chandra Pal Singh Choudhary's case referred supra. The Apex Court in the case of Prahlad Singh Bhati's case referred supra has held as below:-

... In the instant case while exercising the jurisdiction, apparently under S. 437 of the Code, the Metropolitan Magistrate appears to have completely ignored the basic principles governing the grant of bail. The Magistrate referred to certain facts and the provisions of law which were not, in any way, relevant for the purposes of deciding the application for bail in a case where accused was charged with an offence punishable with death or imprisonment for life. The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. Neither S. 437(5) nor S. 439(1) of the Code was attracted. There was no question of cancellation of bail earlier granted to the

accused for an offence punishable under Ss. 498-A, 306 and 406, I.P.C. The Magistrate committed an irregularity by holding that "I do not agree with the submission made by the learned Prosecutor inasmuch as if we go by his submissions then the accused would be liable for arrest every time the charge is altered or enhanced at any stage, which is certainly not the spirit of law." With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Instead of referring to the grounds which entitled the respondent-accused the grant of bail, the Magistrate adopted a wrong approach to confer him the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail.

7. In view of the decision of the Supreme Court in Prahlad Singh Bhati's case and the Single Bench decision of this Court in the case of Mool Chand's case referred supra, the argument advanced by the learned counsel for the petitioner that once the petitioner had been granted bail for lesser offences by the Investigating Officer himself, the learned Sessions Judge was not competent to cancel the bail granted to the accused does not hold water. The view expressed by the Single Bench of this Court earlier in the cases of Gheesya (supra) and Chandra Pal Singh(supra) cannot be said to be laying down the correct law. The learned Sessions Judge while accepting the application for cancellation of bail filed u/s 439(2) Cr.P.C. on the ground that graver and non bailable offences were added to the case on a further investigation has thus committed no error, illegality or abuse of the process of Court in cancelling the bail granted to the petitioner by the police u/s. 436 Cr.P.C. at the stage when only a bailable offence was being disclosed during the course of investigation. The order dated 8.5.2012, therefore, calls for no interference by this court in the exercise of its inherent jurisdiction. The upshot of the above discussion is that the miscellaneous petition being bereft of any force is hereby rejected.