

(2009) 03 RAJ CK 0095
In the Rajasthan High Court

Banwari Lal and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 323, 452

Citation : (2010) 1 RLW 420

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Judgement

Mahesh Bhagwati, J.—This order governs the disposal of bail application filed u/s 438 of Cr.P.C. by Mr. Anoop Dhand, Advocate on behalf of the applicants in FIR No. 201/2007 of police station Reenus, District Sikar, in the offences under Sections 341, 323, 354, 452, 143, 148, 149 of IPC.

2. Heard the learned Counsel for the petitioners as also the learned Public Prosecutor for the State and perused the material on record.

3. Learned Public Prosecutor appearing for the State has opposed the bail petition.

4. Having considered the submissions made at the bar and carefully perused the relevant material on record, it is found that one F.I.R. No. 201/2007 was registered in Police Station Reengus against the petitioners in the offences under Sections 143, 148, 149, 452, 323 and 354 of IPC. Police granted bail to the petitioners u/s 436 of Cr.P.C. treating all the offences to be bailable. Thereafter, S.H.O., Police Station Reengus submitted an application through A.P.P. u/s 437(5) of Cr.P.C., seeking cancellation of bail as the offence u/s 452 of IPC had been added later on during investigation, which was non-bailable. The learned Judicial Magistrate, Reengus dismissed the prayer of the police on the ground that under Sub-section (5) of Section 437 of Cr.P.C. the court had the powers to cancel the bail which had been granted by that Court only. Since in the instant case the bail was granted by police u/s 436 of Cr.P.C., the bail already granted could not be

cancelled by the Court.

5. Aggrieved with this order, the State moved an application u/s 439(2) of Cr.P.C. before Additional District and Sessions Judge (Fast Track) No. 2, Sikar, Camp at Srimadhopur, again seeking the cancellation of bail already granted to the petitioners. The learned Additional Sessions Judge found that since the non-bailable offence u/s 452 of I.P.C was added later on by the Police during the investigation the Court cancelled the bail bonds furnished by the petitioners on 15.8.2007. Now apprehending their arrest in a non-bailable offence u/s 452 IPC, the petitioners have approached this Court to seek anticipatory bail.

6. At the very outset, I would like to point out that the offence u/s 452 of IPC was not added later on by the police, during investigation but having gone through the "police proceeding" appended at the bottom of F.I.R. No. 201/2007 of Police Station Reengus, it is found that the case was registered, inter alia, in the offence u/s 452 of IPC also. The S.H.O., Police Station Reengus, granted bail to the petitioners in all these offences. It is wrong to state that the offence u/s 452 of IPC was added on by police during investigation.

7. Now the most crucial question springing for consideration in the instant case is that "should the Court cancel the bail of the petitioners already granted to them simply for the reason that a new offence u/s 452 of IPC which is non-bailable has been added later on during investigation?"

8. In *Shukhpal v. State of Rajasthan* RLW 1988 (1) 283 it has been 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."

9. In *Gheesya and Ors. v. State of Rajasthan* R.C.C. Dec, 1988 Page 534 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 considers 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 some thing different, such as that the accused is likely to abscond, is likely to tamper with the evidence or that he is misusing his liberty etc."

10. Now adverting to the next issue emerging for determination is as to whether an addition of a non-bailable offence later on during investigation warrants the cancellation of bail already granted to the petitioners?

11. A bird's eye view of some of the decisions of Hon'ble Apex Court throwing a light on this issue needs to be taken into consideration.

12. Hon''ble Supreme Court in the case of State (Delhi Administration) Vs. Sanjay Gandhi, held that:

rejection of bail when bail is applied for is one thing, cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involved the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.

13. Hon''ble Supreme Court has also held in the case of Dolat Ram and Others Vs. State of Haryana, that:

rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so 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 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 trial.

14. This Court has held in the case of Rajbala (Smt.) Vs. State and Another, as under:

It is now well settled by a catena of cases of the Apex Court as well as of this Court that the grounds for cancellation of bail are distinct from the considerations for grant of bail. The bail once granted cannot and ought not to be normally cancelled in a mechanical manner unless there are cogent and overwhelming facts and circumstances on record to do so.

15. In the case of Aslam Babalal Desai Vs. State of Maharashtra, wherein it has been held that.

The grounds for cancellation of bail under Sections 437(5) and 439 (2) are identical, namely, bail granted u/s 437(1) of (2) or 439(1) can be cancelled where (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.

16. In the instant case the learned Additional Sessions Judge has not taken these

factors into consideration while cancelling the bail. She has merely observed in the last paragraph of the order that since the non-bailable offence u/s 452 of I.P.C. has been added during investigation, the bail bonds furnished by the petitioners on 15.8.2007 are cancelled. The order of the learned Additional Sessions Judge is found to be patently perverse and illegal. Firstly, the bail bonds are never cancelled rather they are forfeited. It is in fact the bail order, in pursuance whereof the bail bonds are furnished, which is cancelled. The learned Additional Sessions Judge did not endeavour to ascertain as to whether the offence u/s 452 of IPC was added later on by the police during investigation or the police in the beginning registered the case inter-alia in the offence u/s 452 of IPC. Had the learned Judge taken the trouble of scanning the F.I.R. Carefully, she would not have passed such an illegal order. The learned Additional Sessions Judge should not cancel the bail merely because there is power to cancel the same. What is required is that there should be ground for cancelling the bail and I have no hesitation in observing that unbridled powers of cancelling the bail conferred under Sub-section (2) of Section 439 of Cr.P.C. should not be exercised arbitrarily. The order dated 29.1.2009 rendered by the learned Additional Sessions Judge (Fast Track) No. 2, Sikar, Camp at Srimadhapur with regard to cancellation of bail is found to be unjust, improper and against the canons of law.

17. In view of the above discussion, the bail petition filed u/s 438 of Cr.P.C. on behalf of the petitioners namely, Banwari Lal son of Rameshwar, Dhanna Ram son of Balu Ram, Smt. Shyama @ Bhaji @ Shanti wife of Banwari Lal and Smt. Narayani wife of Rameshwar is allowed.

18. The order dated 29.1.2009 rendered by the learned Additional Sessions Judge (Fast Track) No. 2, Sikar, Camp at Srimadhapur is set aside and the petitioners are ordered to remain on bail which has been granted to them earlier by police on 15.8.2007.