
(2018) 04 J&K CK 0035
In the Jammu And Kashmir High Court
Case No : 561-A Cr.P.C No. 113 OF 2018

BUSHAN KUMAR & ANR

APPELLANT

Vs

STATE & ORS

RESPONDENT

Date of Decision : 18-04-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 561A
Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 323, 341, 354
Protection of Civil Rights Act, 1955 — Section 7(c), 15

Citation : (2018) 04 J&K CK 0035

Hon'ble Judges : JANAK RAJ KOTWAL

Bench : Single Bench

Final Decision : Allowed

Judgement

Petitioners are accused of commission of offences under sections 341, 323, 354 RPC and 7(c) of the Protection of Civil Rights Act, 1955 (for short,

the PCR Act) registered as FIR No. 33 of Police Station, Bishnah on 13.02.2018. They applied for bail in the court of learned Special Mobile

Magistrate, Jammu in File No.569/Misc. on 17.02.2018. Learned Magistrate, after hearing both sides, by a detailed order dated 21.02.2018 admitted

the petitioners to interim bail up to 07.03.2018 subject to the conditions that they shall cooperate in investigation, shall not hamper and tamper with

evidence or influence the prosecution witnesses and will not leave the territorial jurisdiction of the State of Jammu and Kashmir without prior

permission of the court.

After admitting the petitioners to interim bail on 21.02.2018, the bail application was adjourned to 07.03.2018. In the meantime, however, the victim of

the alleged incident moved an application on 22.02.2018 before the same

Magistrate through her father in File No. 570/Misc. for recalling the order dated 21.02.2018. She contended that in the application for bail the petitioners have concealed the fact that earlier they had moved an application for anticipatory bail in the court of learned 1st Additional Sessions Judge, Jammu which, however, was withdrawn by them on 21.02.2018 when that court was about to dismiss the same because of a special offence alleged to have been committed by the petitioners. It was alleged also that the petitioners have concealed the incorporation of special offence in the FIR in which the court of Magistrate could not have granted bail. In this application, learned Magistrate issued notice to the counsel for the petitioners and listed the matter on 23.02.2018. None appeared on behalf of the petitioner on 23.02.2018 and the Magistrate adjourned the matter to 24.02.2018. Order passed by the learned Magistrate on 24.02.2018 could not be traced on the record received in this court, which, nonetheless, reveals that objections on behalf of the petitioners were filed on 26.02.2018. On 26.02.2018, learned Magistrate recalled the interim bail granted to the petitioners on 21.02.2018 and disposed of the application. Order dated 26.02.2018 is impugned in this petition under section 561-A Cr.P.C.

Learned counsel for the petitioner, Mr. Vinod Wali, Advocate submitted, precisely, that the impugned order is illegal as learned Magistrate has not

applied the principles applicable to the cancellation of bail, which certainly are different than the principles applicable to grant of bail. Per contra, Mr.

Pawan Kumar Kundal, learned counsel for the victim argued that the court granting bail can cancel the bail if it is pointed out that bail was obtained by

concealment of important facts, which if revealed, bail would not have been granted. Learned counsel relied upon Patna High Court judgment dated

02.09.1992 in Ramadhar Pandey v. State of Bihar and anr. and Bombay High Court judgment in Ramparsad v. State of Maharashtra dated

07.01.1998. Learned counsel produced computer printout of these judgments.Â

The first question raised for consideration is, whether the petitioners in their application for bail before the learned Magistrate have concealed the

factum of filing, withdrawal and dismissal of application for anticipatory bail earlier filed by them in the court of learned 1st Additional Sessions Judge,

Jammu. Reply to this question would be definitely â??noâ??.

In the application for bail in File No. 569/Misc. filed on 17.02.2018, in which the

interim bail was granted on 21.02.2018, it was clearly stated in paragraph 8 thereof that petitioners were apprehending arrest so they had already sought anticipatory bail. The application was annexed with a copy of order dated 14.02.2018 whereby in the application for anticipatory bail filed by them, learned 1st Additional Sessions Judge, Jammu had granted them interim anticipatory bail. The file also contains copy of order dated 21.02.2018 passed by the learned 1st Additional Sessions Judge, Jammu whereby application for anticipatory bail filed by the petitioners was dismissed as withdrawn on a submission made by their counsel. The factum of the petitioners having been granted anticipatory bail stands reflected twice in the order passed by the learned Magistrate on 21.02.2018, whereby interim bail was granted to the petitioners. Victim, therefore, in her application for cancellation of interim bail granted to the petitioners by the learned Magistrate was not correct in her contention that factum of the pendency or dismissal of the application for anticipatory bail filed by the petitioners was concealed by them in the application for bail before the Magistrate. Recalling of the interim bail on this score, therefore, should not have been sought or allowed by the learned Magistrate. The case law relied upon by the learned counsel for the victim, therefore, has no application.

The other question raised is whether the petitioners in their application for bail have concealed the incorporation of a special offence in the FIR, in which the court of Magistrate could not have granted bail? Allegation of concealment of the special offence, however, is not correct. A copy of the FIR is lying on the record of the bail application received from the court of the learned Magistrate, which was annexed with the bail application and referred to in paragraph 9 thereof. Offence under section 7 (c) PCR Act is mentioned at the first page of the FIR so there is no point in saying that this aspect was concealed by the petitioners. What, however, has been noticed is that as per the heading of the application for bail, petitioners have sought bail in offences under section 341, 354 and 323 RPC, notwithstanding that they have been booked for offence under section 7 (c) PCR Act also. The order dated 21.02.2018, whereby interim bail was granted by the learned Magistrate, would show that learned Magistrate had taken into consideration these three offences only and seems not to have noticed the involvement of the petitioners in commission of offence under section 7 (c)

PCR Act. The interim bail in effect was granted in offences under sections 354, 323 & 341 RPC and not in the offence under section 7 (c) PCR Act.

Recalling of the interim bail on the plea that commission of offence under section 7 (c) PCR Act was concealed, therefore, should neither have been

sought by the victim nor allowed by the learned Magistrate.Â

The plea that bail in the offence under section 7 (c) PCR Act could not have been granted by the learned Magistrate and interim bail was liable to be

recalled on that score is legally incorrect and in context of the grant of the interim bail by the learned Magistrate was misconceived. An offence under

PCR Act may be called a special offence only in the sense that it is an offence under a special Act and not under RPC. However, no offence under

this Act is a special offence in context of its trial or other proceedings, including grant of bail. Under section 15 of the PCR Act every offence

punishable under this Act is cognizable and every such offence, except where it is punishable with imprisonment for a minimum term exceeding three

months, may be tried summarily by a Judicial Magistrate of Ist Class. The Act does not provide for trial by a special court to be created under the

Act. Question in regard to nature of offence under section 7 (c) PCR Act, however, did not arise at all insofar as prayer for recalling of interim bail

was concerned for the reason that bail in that offence was not granted.Â

It can be said in this case that in recalling (cancelling) the interim bail, learned Magistrate has acted in total disregard to the principles governing

cancellation of bail in non-bailable offences, even though the Magistrate in the impugned order referred to Supreme Court judgment in Daulat Ram v.

State of Haryana, (1995) 1 SCC 349.Â

Legal position in this regard is stated, briefly. Criteria for cancellation of bail already granted are entirely different than the criteria for refusal of

bail.Â Grant of bail in a non bailable offence is discretion of a court but this discretionary jurisdiction is to be exercised in judicious manner by applying

sound judicial principles, which by now are well settled. Court can refuse bail in non bailable offences if in the opinion of the court a case for granting

bail is not made out, having regard to the factors, which are well laid down and need not be stated here. Nonetheless, it would be apt to refer to a

recent observation of the Supreme Court in Siddharam Satlingappa Mhetre v. State of Maharashtra and ors. (2010) 8 Supreme 353:

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely sanctity of individual liberty and the interest of the society. The Law of bails dovetails two conflicting interests namely on the one hand, the requirement of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

Bail, interim or final, once granted, can be cancelled only if a case for cancellation is made out having regard to the factors, which are certainly other than those to be considered for the purpose of grant/refusal of bail.

17. Law as regards, cancellation of bail is now well settled. In Daulat Ram's case (supra), the Supreme Court has considered the factors to be

taken into consideration while ordering cancellation of bail and has 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 ground for cancellation of bail, broadly (illustrative and no 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 or the possibility of the accused absconding is yet another reason

justifying the cancellation of bail.

Learned Magistrate, earlier having granted interim bail, should have taken up the bail application for final disposal but has fallen in error of law by

recalling the interim bail on misconceived pleas raised by the victim.

Viewed thus, this petition has strong merit and is allowed. In the result, the impugned order dated 26.02.2018 is quashed.

Record of the learned Magistrate be remitted back along with a copy of this order. Learned Magistrate shall dispose of the bail application on merits.