
(2016) 05 P&H CK 0284
In the Punjab And Haryana At Chandigarh
Case No : CRM-M No. 5211 of 2016

Damandeep Kaur Gill

APPELLANT

Vs

State of Punjab And Anr.

RESPONDENT

Date of Decision : 13-05-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)
Penal Code, 1860 (IPC) — Section 406

Citation : (2016) ALLMRCri 519 : (2016) 4 CriCC 164 : (2016) 3 LawHerald 2117 : (2016) 3 RCRCriminal 1027

Hon'ble Judges : Anita Chaudhry, J.

Bench : Single Bench

Advocate : Mr. Ashok Goel, Advocate, for the Appellant; Mr. Deep Singh, AAG, for the Respondent

Final Decision : Dismissed

Judgement

Anita Chaudhry, J.—Through the instant petition, the petitioner seeks cancellation of anticipatory bail granted to respondent no.2.

2. Notice was given regarding maintainability of the petition only to respondent no. 1 .

3. The petitioner was married to son of respondent no.2 in 2011. An FIR was got registered in June, 2015. Respondent no.2 approached the Additional Sessions Judge, Patiala for anticipatory bail. She had joined the investigation and interim bail granted to her was confirmed on 24.07.2015. The petitioner is seeking cancellation of interim bail on the ground that the gold ornaments and Istridhan was still with respondent no.2 and it had not been recovered.

4. It was urged that the Investigating Officer had stated that recovery had not been effected but the Court still allowed bail and bail can be cancelled if it has been granted in a case which was not fit case for bail and the Court had committed an error. Reliance was placed upon *Puran v. Rambilas & Ors.*, AIR

2001 SC 2023, Krishan Bhattacharjee v. Sarathi Choudhury and Anr. 2013(1) RCR (Crl.) 153 and Gurcharan Singh and others v. State (Delhi Administration), AIR 1978 SC 179.

5. On the other hand, State counsel urges that once the bail has been granted, the grounds of cancellation are disclosed in Section 439(2) Cr.P.C. and no case for cancellation is made out.

6. It is necessary to refer to two decisions of the Supreme Court i.e. Delhi Administration v. Sanjay Gandhi AIR 1978 SC 961 and Raghbir and another v. State of Bihar AIR 1987 SC 149, which deals with the grounds on which bail can be cancelled under Section 439(3) Cr.P.C. In Sanjay Gandhi's (supra) case it was held that rejection of bail is one thing and cancellation of bail already granted is quite another.

7. Cancellation of bail necessarily involves review of a decision already made and can by large be permitted only if by reasons of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during trial.

8. In Raghubir Singh's case (supra) it was held that the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 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 and (vii) attempts to place himself beyond the reach of his surety, etc. It was held that rejection of bail stood on one footing but cancellation of bail was a harsh order as it interfered with the liberty of the individual and could not be lightly resorted to.

9. The petitioner seeks cancellation of the bail on the ground that some articles remained to be recovered from the respondent. This fact was noted by the Additional Sessions Judge.

Para no. 4 of the impugned order reads as under:-

"The question whether the dowry articles and cash amount besides which are already recovered, were in possession of the bail applicant or not, is a matter of trial and hence cannot be commented upon at this stage. Otherwise, there is nothing on the record or mentioned by the investigating officer to suggest that the bail applicant has not co-operated with the investigation or has tried to hamper the investigation in any way."

10. In my opinion, non recovery of the articles is not a valid ground for cancellation of bail. It is a matter of trial and it will have to be proved as to how much dowry was given and in whose custody the same was. The petition is

dismissed as it is not maintainable.