
(2018) 10 P&H CK 0238
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal (D) No.378 Of 2018

Kharati Lal And Ors.

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 05-10-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 438

Citation : (2018) 10 P&H CK 0238

Hon'ble Judges : Arvind Singh Sangwan, J

Bench : Division Bench

Advocate : Bipan Ghai, Vishavjit S. Virk, Himmat Singh

Final Decision : Disposed off

Judgement

Arvind Singh Sangwan, J.

Prayer in this petition is for setting aside the order dated 22.01.2018 vide which the regular bail granted to the petitioners namely Kharati Lal, Gopal

Krishan and Pardeep, was cancelled by the Additional District Judge, Panchkula.

While issuing notice of motion on 20.02.2018, arrest of the petitioners was stayed by this Court.

Learned Senior Counsel submits that the only ground taken for cancelling the bail of the petitioners, in the impugned order is that when the co-accused

Ranbir Singh was arrested, he had suffered a disclosure statement on 20.12.2017 that he was planning to surrender long back but on the asking of the petitioners, who were on bail, he did not surrender. It is further stated by him that the petitioners were pressurising him and other accused persons not to surrender.

Learned Senior Counsel further submits that the finding recorded by the

Additional Sessions Judge, Panchkula that by exerting such pressure on the co-accused not to surrender before the Court, they have misused the concession of bail is erroneous as the petitioners have neither misused the bail, threatened any witness or violated the provisions of Section 438 of Cr.P.C.

Learned senior counsel has relied upon 1978 AIR (SC) 961, The State through the Delhi Administration vs. Sanjay Gandhi, wherein the Hon'ble Supreme Court has held as under:

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 involves 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. The fact that prosecution witnesses have turned hostile cannot by itself justify the inference that the accused has won them over. brother, a sister or a parent who has seen the commission of crime, may resile in the Court from a statement recorded during the course of investigation. That happens instinctively, out of natural love and affection, not out of persuasion by the accused. The witness has a stake in the innocence of the accused and tries therefore to save him from the guilt. Likewise, an employee may, out of a sense of gratitude, oblige the employer by uttering an untruth without pressure or persuasion. In other words, the objective fact that witnesses have turned hostile must be shown to bear a causal connection with the subjective involvement therein of the respondent. Without such proof, a bail once granted cannot be cancelled on the off chance or on the supposition that witnesses have been won over by the accused. Inconsistent testimony can no more be ascribed by itself to the influence of the accused than consistent testimony, by itself, can be ascribed to the pressure of the prosecution. Therefore, Mr. Mulla is right that one has to countenance a reasonable possibility that the employees of Maruti like the approver Yadav might have, of their own volition, attempted to protect the respondent from involvement in criminal charges. Their willingness now to oblige the respondent would depend upon how much the respondent has obliged them in the past. It is therefore necessary for the prosecution to show some act or conduct on the part of the respondent from

which a reasonable inference may arise that the witnesses have gone back on their statements as a result of an intervention by or on behalf of the respondent.â??

It is thus submitted that for passing an order cancelling the bail involves review of the earlier order and there is no allegation against the petitioners that they have either threatened any of the prosecution witnesses or has misused the concession of bail. It is further submitted that the petitioners are regularly appearing before the trial Court and are facing the trial.

Learned State counsel, on instructions from Inspector Ashok Kumar, has however, opposed the prayer on the ground that the petitioners had put pressure on the co-accused namely Ranbir Singh not to surrender before the trial Court and it has come in the disclosure statement dated 20.12.2017 made by Ranbir Singh that though he wanted to surrender but on the asking of the petitioners, he did not surrender for a long time.

In reply, learned Senior Counsel for the petitioners has relied upon 2018(3) RCR (Criminal) 101 â??Ms. X vs. State of Telanganaâ?, wherein the

Hon'ble Supreme Court has held that bail once granted, should not be cancelled, unless there are cogent reasons based on supervening event. Learned

Senior Counsel has also relied upon 2018(1) RCR (Criminal) 967, â??Lachhman Dass vs. Resham Chand Kaler and anotherâ?, wherein the Hon'ble

Supreme Court has held that there are different parameters for granting the bail and for cancellation of the bail.

After hearing learned counsel for the parties, I find merit in the present petition.

In view of the judgment of the Hon'ble Supreme Court in Sanjay Gandhi's case (supra), the Additional Sessions Judge, Panchkula, while cancelling the

bail of the petitioners has not followed the proper procedure and has rather decided the application for cancellation of bail in a manner as if the

application for bail is to be rejected. Whereas, the criteria for cancelling the bail is on different footing and there are specific grounds on which the bail

can be cancelled and the impugned order is non speaking qua the same.

In view of the aforesaid, the revision petition is allowed. The impugned order dated 22.01.2018 is set aside.

The petition stands disposed of.