

(2021) 06 SHI CK 0159

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1192 Of 2021

Kirti Sharma

APPELLANT

Vs

State Of Himachal Pradesh And Another

RESPONDENT

Date of Decision : 29-06-2021

Acts Referred:

Indian Penal Code, 1860 — Section 376

Citation : (2021) 06 SHI CK 0159

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Jeevesh Sharma, Anil Jaswal, Manoj Bagga

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Notice restricted to respondent No.1, which is waived by Mr. Anil Jaswal, learned Additional Advocate General. Status report has been filed by the respondent- State, which is perused.

Heard learned counsel for the parties.

2. Petitioner seeks cancellation of bail granted to the accused in Cr.MP(M) No.874 of 2021 vide order dated 17.05.2021. While allowing the bail

petition of the accused- Neeraj Sharma, following was observed in order dated 17.05.2021:-

â??The petitioner is behind the bars since 30.4.2021 in connection with FIR No. 34/2021, dated 30.4.2021, registered under Section 376 of Indian

Penal Code at Women Police Station, Baddi and seeks his enlargement on regular bail.

2. The case against the petitioner was registered on the basis of a complaint

lodged by the prosecutrix on 30.4.2021. She alleged that she came to Baddi on 3.1.2020 in search of a job. During the month of August 2020 she came in contact with the petitioner. At the false pretext of marrying her, the petitioner established physical relations with her. Upon her insistence for solemnizing the marriage, the petitioner used to state that though he loves the prosecutrix, however, marriage can be solemnized only with the consent of his family members, who are not willing for this marriage. It was further complained by the prosecutrix that the petitioner thereafter got engaged with another girl and refused to marry the prosecutrix. On the basis of these allegations, the FIR was registered.

3. I have heard learned counsel for the parties and gone through the status report and the documents appended with the bail petition.

4. From perusal of all the documents, it comes to fore that the prosecutrix is a mature lady aged 26 years. She had been living separately at Baddi

since January 2020. As per her own allegations, the petitioner used to convey her the reluctance of his family members in solemnizing his marriage

with the prosecutrix. Still both of them allegedly maintained physical relations During arguments, learned counsel for the petitioner also referred to an

affidavit allegedly executed by the prosecutrix on 3.5.2021 to the effect that the petitioner has now agreed to perform marriage with her and on the

basis of such assurance she does not want to pursue further with the FIR lodged by her. Be that as it may. Considering the present COVID-19

pandemic situation, totality of the circumstances, the mode and manner of commission of the alleged offence and also keeping in view the fact that the

investigation in the matter is almost complete, no further significant purpose will be achieved by keeping the petitioner in custody any further.

Petitioner is local resident of village Rasuhi, Post Office Barwara, Tehsil Dehra, District Kangra and his presence can be ensured during the trial.

Accordingly, instant petition is allowed. Petitioner is ordered to be released on bail on his furnishing personal bond of Rs. 50,000/- with one local surety

in the like amount to the satisfaction of learned trial Court having jurisdiction over the concerned Police Station, subject to the following conditions:

(i) Petitioner is directed to join the investigation of the case as and when called for by the Investigating Officer in accordance with law. He shall fully

cooperate the Investigating Officer and will appear before him in the concerned

police station as and when called in accordance with law;

(ii) Petitioner shall not tamper with the evidence or hamper the investigation in any manner whatsoever:

(iii) Petitioner will not leave India without prior permission of the Court.

(iii) Petitioner shall not contact the complainant or her family members in any manner whatsoever. Petitioner shall not contact, threaten or intimidate the victim in any manner whatsoever.

(iv) Petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer;

(v) In case of launching of prosecution, petitioner shall attend the trial on every hearing, unless exempted in accordance with law.

(vi) Petitioner shall inform the Station House Officer of the concerned police station about his place of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, E-mail, PAN Card, Bank Account Number, if any.

In case of violation of any of the terms & conditions of the bail, respondent-State shall be at liberty to move appropriate application for cancellation of

the bail. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an

opinion on the merits of the matter. Learned trial Court shall decide the matter without being influenced by any of the above observations.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.â??

3. The complainant/petitioner seeks cancellation of bail on the ground that after obtaining bail, the accused has refused to marry her. Another

allegation is that the complainant/petitioner approached the accused at his house, however, he was not found there. The parents of the accused

informed the complainant that he had left the house and that they were not aware of his whereabouts. It is contended that by not giving his address, the

accused has violated conditions of grant of bail. It is also alleged that accused had filed frivolous complaints against the complainant and her family

members.

4. In the status report filed by the respondents, it has been mentioned that the accused has associated with the investigating agency even after grant of bail. The investigating agency has already presented the challan before the competent Court on 17.06.2021. Status report also records the fact that the accused remained present at the police station as recently as on 28.06.2021, i.e. yesterday, and co-operated with the investigating agency. As per the status report, the accused has supplied to the investigating agency the details of his temporary as well as permanent addresses, telephone numbers and E-mail ID.

5. In view of the facts as have come up in the status report, vague allegations levelled by the complainant/petitioner in the instant petition, seeking cancellation of bail, are not sufficient to allow the petition. Liberty of the accused granted on 17.05.2021 in Cr.MP(M) No.874 of 2021 cannot be curtailed on flimsy reasons, which according to the investigating agency, are not true.

The refusal of the accused to marry the petitioner, also, cannot be considered as a ground to cancel his bail. Honâ??ble Supreme Court in (2011) 5

SCC 296, titled Central Bureau of Investigation, Hyderabad Versus Subramani Gopalakrishnan and another, held that there is difference between

yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order

directing the cancellation of bail already granted. Relevant para of the judgment is as under: -

â??23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting

bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally

speaking, the grounds for cancellation of bail 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 concessions granted to the accused in any manner. These are all only

few illustrative materials. The satisfaction of the court on the basis of the materials placed on record of the possibility of the accused

absconding is another reason justifying the cancellation of bail. In other words, 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

accused to retain his freedom by enjoying the concession of bail during the trial.â??

The principles regarding cancellation of bail were reiterated in (2020) 2 SCC 743, titled Myakala Dharmarajam and others Versus State of Telangana

and another. Paras 8 and 9 of the judgment, being relevant, are reproduced below:-

Â â??8. In Raghbir Singh v. State of Bihar this Court held that bail 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. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection

of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it

must not be lightly resorted to.

9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in

miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into

account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court

would be justified in cancelling the bail.â??

In the instant case, there is no cogent and overwhelming circumstance, necessitating cancellation of bail. The parameters set forth for cancellation of

bail are not met in the present petition. Therefore, this petition lacks merit and is accordingly dismissed. Pending miscellaneous application(s), if any,

also stand disposed of.