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**(2012) 04 P&H CK 0164**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Miscellaneous M. No. 15177 of 2011 (O and M)

Naresh and Others

APPELLANT

Vs

The State of Haryana

RESPONDENT

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**Date of Decision :** 04-04-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 437  
Penal Code, 1860 (IPC) — Section 148, 149, 186, 332, 341  
Prevention of Damage to Public Property Act, 1984 — Section 3, 4, 5

**Citation :** (2012) 04 P&H CK 0164

**Hon'ble Judges :** Rajesh Bindal, J

**Bench :** Single Bench

**Advocate :** Ashok Jindal, A.A.G., Haryana, for the Appellant; Raj Kapoor Malik, Advocate for accused Rakesh, Satish @ Kala and Surender and Kala, for the Respondent

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## Judgement

Rajesh Bindal, J.—This order will dispose of the matter of cancellation of bail of the three accused namely Rakesh, Satish @ Kala and Surender @ Kala, in FIR No. 39, dated 20.4.2010, registered under Sections 148, 149, 332, 353, 186, 436, 511, 341 IPC read with Sections 3/4 of Prevention of Damage to Public Property Act, 1984, at Police Station Rajound, District Kaithal. The aforesaid FIR was registered on account of mob violence by number of persons in the area for the reason that one Kaptan was murdered. The residents of the village considering that police was not taking any action tried to take law and order into their own hands. They collected on Jind-Kaithal road and blocked the same. Two Haryana Roadways buses were damaged. They even encircled (gherao) the police post in the area and set the same on fire by putting paddy straw. The above named petitioners filed applications for the grant of regular bail in the above mentioned FIR on the grounds that they have been falsely implicated in the present FIR and on the ground of parity as other co-accused namely Rakesh, Satish @ Kala and Surender @ Kala were granted regular bail by the learned Additional Sessions Judge, Kaithal vide its order dated 13.7.2010. Considering

the seriousness of charges against the petitioners this court did not find any merit in the petition, however, the petitioners therein were permitted to withdraw the same. It is in the said order that this court issued notice to the other co-accused named in the FIR, who were earlier granted bail by the learned Additional Sessions Judge to show cause as to why bail already granted to them be not cancelled as they were specifically named in the FIR as accused.

2. In reply to the show cause notice, the answering respondents filed affidavit stating that they have not paid any bribe to any one in the present case to get them released on bail. It is further stated that they never misused the concession of bail ever since their release from jail. They are attending the court regularly on each and every date of hearing before the learned court below. The learned counsel for the answering respondents placed reliance on judgment of Hon'ble the Supreme Court in *Hazari Lal Das Vs. State of West Bengal and Another*, stating that bail once granted by the court cannot be cancelled and the considerations for grant of bail are not the same as are for the cancellation of bail.

3. On the other hand, learned counsel for the State submitted that the bail granted to accused persons should be cancelled as they collected on Jind-Kaithal Road and blocked the same. Two Roadways buses were also damaged by them. They spread violence by putting on fire Police Station, Kaithal. Such type of incidents need to be curbed with iron hands.

4. Heard learned counsel for the parties and perused the paper book.

5. Earlier bail was granted to three accused as mentioned in para. No. 1 of the order, cancellation of which is under consideration. But the officer, who had directed release of three of the accused named in the FIR on bail merely after 13 days of their arrest, was, in fact, removed from service during probation period.

6. The matter regarding the cancellation of the bail came up for hearing before the Hon'ble Supreme Court in *Prakash Kadam and Vs. Ramprasad Vishwanath Gupta and Another*, wherein it has been held that it is not an absolute rule that considerations for cancellation of bail are different from the consideration for grant of bail. It will depend on the facts and circumstances of the case. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused etc. If there are very serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him. There is no absolute rule that once bail is granted to the accused then it can be cancelled only if there is likelihood of misuse of bail. That factor, though no doubt important, is not the sole consideration. There are several other factors also which may be seen while deciding to cancel the bail. The relevant paragraph of the aforesaid judgment are reproduced hereunder:-

17. It was contended by the learned counsel for the appellants before us, and it was also contended before the High Court, that the considerations for

cancellation of bail are different from the consideration of grant of bail vide Bhagirathsinh Judeja Vs. State of Gujarat, Dolat Ram and Others Vs. State of Haryana, and Ramcharan v. State of M.P., 2006 (2) R.C.R. (Cri.) 327 : 2006 (2) A. Cri. 216 : (2004) 13 SCC 617. However, we are of the opinion that that is not an absolute rule, and it will depend on the facts and circumstances of the case.

18. In considering whether to cancel the bail the Court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same Court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/Revisional Court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.

Further it was observed:

33. Thus in the Shantiparva of Mahabharata, Vol. 1 it is stated:-

Raja chen-na bhavellokey prithivyaam dan-dadharakah Shuley matsyanivapakshyan durbalaan balvattaraah.

This shloka means that when the King carrying the rod of punishment does not protect the Earth then the strong persons destroy the weaker ones, just like in water the big fish eat the small fish. In the Shantiparva of Mahabharata Bhishma Pitamah tells Yudhishtir that there is nothing worse in the world than lawlessness, for in a state of Mat-syanyaya, nobody, not even the evil doers are safe, because even the evil doers will sooner or later be swallowed up by other evil doers.

7. The present case deals with the incident, which needs to be dealt with stern hands. It has become a routine for the people to take law into their own hands even for trivial disputes. As a matter of course, they come on road and damage public property put life of general public in danger. This court, vide its detailed order dated 11.11.2011 passed in Criminal Misc. M. No. 32015 of 2011 Kulbir alias Kulu and another v. The State of Haryana has discussed the issue while dismissing the bail application of the co-accused in the same FIR. The issue regarding the leaders of such Organisations who manage collection of mob, direct damage to public property and walk away with clean hands has also been dealt in it. Detailed guidelines regarding concerned issue and reports submitted by Justice K.T. Thomas Committee and F.S. Nariman Committee which form part of judgment of Hon'ble the Supreme Court reported as Destruction of Public and Private Properties Vs. State of A.P. and Others, , have also been discussed in it. The relevant paragraphs therefrom are extracted below:-

After hearing learned counsel for the petitioners and perusing the paper-book, in my opinion, it is not a case for grant of regular bail to the petitioners at this stage. The kind of incident in which the petitioners are involved needs to be dealt with stern hands. It has become a routine for some people to take law in their own hands for any small incident. They come on road and damage public or private property. In case there is some death in any hospital, besides damaging the same, many a times even doctors and the staff are also beaten up.

Taking note of various instances where there was large scale destruction of public and private property in the name of agitation, bandhs, and the like, Hon''ble the Supreme Court initiated suo motu proceedings. Two committees were appointed. One headed by Retired Judge of Hon''ble the Supreme Court and one headed by Mr. F.S. Nariman, a senior member of the Bar. The report given by Justice K.T. Thomas, which form part of judgment of Hon''ble the Supreme Court reported as Destruction of Public and Private Properties Vs. State of A.P. and Others, , and the recommendations of Hon''ble the Supreme Court thereon are extracted below:-

5. The report submitted by Justice K.T. Thomas Committee has made the following recommendations:

(i) The PDPP Act must be so amended as to incorporate a rebuttable presumption (after the prosecution established the two facets) that the accused is guilty of the offence.

(ii) The PDPP Act to contain provision to make the leaders of the organization, which calls the direct action, guilty of abetment of the offence.

(iii) The PDPP Act to contain a provision for rebuttable presumption.

(iv) Enable the police officers to arrange videography of the activities damaging public property.

6. The recommendations have been made on the basis of the following conclusions after taking into consideration the materials.

In respect of (i)

7. According to this Committee the prosecution should be required to prove, first that public property has been damaged in a direct action called by an organization and that the accused also participated in such direct action. From that stage the burden can be shifted to the accused to prove his innocence. Hence we are of the view that in situations where prosecution succeeds in proving that public property has been damaged in direct actions in which accused also participated, the court should be given the power to draw a presumption that the accused is guilty of destroying public property and that it is open to the accused to rebut such presumption. The PDPP Act may be amended to contain provisions to that effect.

In respect of (ii)

8. Next we considered how far the leaders of the organizations can also be caught and brought to trial, when public property is damaged in the direct actions called at the behest of such organizations. Destruction of public property has become so rampant during such direct actions called by organizations. In almost all such cases the top leaders of such Organisations who really instigate such direct actions will keep themselves in the background and only the ordinary or common members or grass root level followers of the organisation would directly participate in such direct actions and they alone would be vulnerable to prosecution proceedings. In many such cases, the leaders would really be the main offenders being the abettors of the crime. If they are not caught in the dragnet and allowed to be immune from prosecution proceedings, such direct actions would continue unabated, if not further escalated, and will remain a constant or recurring affair.

Of course, it is normally difficult to prove abetment of the offence with the help of direct evidence. This flaw can be remedied to a great extent by making an additional provision in PDPP Act to the effect that specified categories of leaders of the organization which make the call for direct actions resulting in damage to public property, shall be deemed to be guilty of abetment of the offence. At the same time, no innocent person, in spite of his being a leader of the organization shall be made to suffer for the actions done by others. This requires the inclusion of a safeguard to protect such innocent leaders.

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The Committee felt that offenders arrested for damaging public property shall be subjected to a still more stringent provision for securing bail. The discretion of the court in granting bail to such persons should be restricted to cases where the court feels that there are reasonable grounds to presume that he is not guilty of the offence. This is in tune with Section 437 of the Code of Criminal Procedure, 1973 and certain other modern Criminal Law statutes. So we recommend that Section 5 may be amended for carrying out the above restriction.

Thus we are of the view that discretion to reduce the minimum sentence on condition of recording special reasons need not be diluted. But, instead of "reasons" the court should record "special reasons" to reduce the minimum sentence prescribed. However, we felt that apart from the penalty of imprisonment the court should be empowered to impose a fine which is equivalent to the market value of the property damaged on the day of the incident. In default of payment of fine, the offender shall undergo imprisonment for a further period which shall be sufficient enough to deter him from opting in favour of the alternative imprisonment.

In addition to the aforesaid directions on the basis of the committee headed by Justice K.T. Thomas, Hon"ble the Supreme Court had also directed for assessment of damages on account of destruction of public/private property and recovery thereof. It was further directed by Hon"ble the Supreme Court that the

recommendations of K.T. Thomas and F.S. Nariman committees, which have been approved by Hon"ble the Supreme Court shall immediately become operative as guidelines.

8. Recently media reported the issue concerning reservation which had triggered widespread violence in some parts of the State of Haryana. The agitators had set on fire official vehicle of District & Sessions Judge, Jind at Hisar. Hence, the incident in question is quite serious. Besides blocking the road, damaging the public property as well as private property, the agitators in the present case had even put the police station on fire.

9. Considering the seriousness of allegations, in my opinion, the bail granted to the above-mentioned three accused merely after 13 days of custody deserves to be cancelled.

10. Ordered accordingly. Copy of the order be placed on the file of connected case.