

(2009) 09 RAJ CK 0004

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Canc. Application No. 4105 of 2009

Sayara Bano (Smt.)

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)

Citation : (2009) 09 RAJ CK 0004

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—This order governs the disposal of an application filed u/s 439(2) of Cr.P.C. by the petitioner Smt. Sayara Bano seeking cancellation of bail of the respondent No. 1 who has been granted anticipatory bail vide order dt. 21st May, 2009 rendered by the learned Sessions Judge, Jaipur City, Jaipur.

2. Heard the learned Counsel for the petitioner, learned Counsel for the respondent No. 1 as also learned Public Prosecutor appearing for the State and perused the relevant provisions of law as also relevant material available on record.

3. Learned Counsel for the petitioner has craved the cancellation of bail on the ground that dowry articles as per the list annexed with the complaint have yet not been returned by the respondents. Learned Sessions Judge granted anticipatory bail to the respondent No. 1 on the ground that he will return all the dowry articles to the petitioner but it has not been done so, hence, on account of there being a breach of condition of bail order, the bail granted to the respondent No. 1 Mohd. Ashfaq @ Mohd. Ashwaq Gabbar deserves to be cancelled.

4. Learned Public Prosecutor appearing for the State as also learned Counsel for the respondent No. 1 have submitted that he has returned the dowry articles along with a cheque of Rs. 51,000/-. So far as golden articles are concerned,

they were already with the petitioners and no criminal breach of trust has been made by the respondent No. 1. He has further contended that the learned Counsel for the petitioner has not assigned any cogent reason for cancellation of bail, as such, the petition deserves to be dismissed.

5. Now, it is very settled that the parameters of accepting the bail are altogether distinct from the parameters of cancelling the bail already granted. The respondent has not abused the liberty of his bail. The petitioner has not quoted any instance to prove that the respondent tampered with or endeavoured to tamper with any witness, posed any threat to the petitioner, tried to hide himself or hampered the investigation or the trial of the case, as such, the petition deserves to be dismissed.

6. Hon''ble Supreme Court in the case of State (Delhi Administration) Vs. Sanjay Gandhi, has held that:

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.

(Emphasis supplied)

7. Hon''ble Supreme Court has also held in the case of Dolat Ram and Others Vs. State of Haryana, that:

rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so 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 grounds for cancellation of bail, broadly (illustrative and not 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 of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, 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.

(Emphasis supplied)

8. Hon''ble Rajasthan High Court has held in the case of Smt. Rajbala v. State of Rajasthan 2005 (1) R.C.C. 289 as under:

It is now well settled by a catena of cases of the Apex Court as well as of this

Court that the grounds for cancellation of bail are distinct from the considerations for grant of bail. The bail once granted cannot and ought not to be normally cancelled in a mechanical manner unless there are cogent and overwhelming facts and circumstances on record to do so.

(Emphasis supplied)

9. The learned Counsel for the petitioner has simply argued that the lower Court has granted the bail on untenable grounds but has failed to explain as to what are those untenable grounds which were lost sight of by the lower Court. The issue emerging in the petition is as to whether there are grounds available on record to cancel the bail granted to the respondent. Merely arguing that the bail has been granted on untenable grounds is not sufficient to cancel the bail. No such apprehension has been shown by the petitioner that the interference or attempt to interfere with the due course of administration of justice has been made or the concession of bail granted to the respondent has been abused in any manner or the respondent is likely to abscond or they shall temper with the witnesses. No such cogent or overwhelming circumstances have been put forth which are necessary for order directing the cancellation of bail, already granted.

10. Now it has been brought to our notice either from which any inference may possibly be drawn that the respondent has in any manner, whatsoever, abused the concession of bail during intervening period. I do not find any strong ground to cancel the bail already granted to the respondent.

11. For these reasons, the petition filed u/s 439(2) of Cr.P.C. seeking cancellation of bail being bereft of merits and devoid of substance stands dismissed.