

(2019) 01 P&H CK 0119

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 33314 Of 2017

Sukhwanspal Singh Pandher

APPELLANT

Vs

State Of Punjab And Another

RESPONDENT

Date of Decision : 18-01-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439(2)C, 438(2)
Indian Penal Code, 1860 — Section 120B, 380
Negotiable Instruments Act, 1881 — Section 138

Citation : (2019) 01 P&H CK 0119

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : Liaqat Ali, Rashmi Attri, Aman Bansal

Final Decision : Dismissed

Judgement

The present petition has been filed by the petitioner under Section 439(2) Cr.P.C. for cancellation of anticipatory bail granted to respondent No.2 by the Additional Sessions Judge, Ludhiana vide order dated 05.04.2017 in case FIR No.139 dated 10.12.2016 registered under Section 380 read with Section 120-B of Indian Penal Code at Police Station Dehlon, District Ludhiana.

Learned counsel for the petitioner submits that while granting anticipatory bail to respondent No.2, the actual contents and allegations levelled in the FIR have not been taken into consideration. Respondent No.2 along with other persons fraudulently by misrepresenting the facts have taken away the machinery by loading in the truck including the raw material. Learned counsel further submits that respondent No.2 removed machinery of the petitioner from his firm by showing that it was sold to settle the account whereas it is patently wrong as no document is there to support his version. Without making any recovery, respondent No.2 has been released on bail. Learned counsel also submits that the total value of machinery is approximately 70-80 lacs and as such there was no question of settlement with him.

Learned State counsel submits that the investigation has been completed and challan has been presented. Now the case is fixed for framing of charges. Proceedings under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the NI Act') are also pending between the parties.

Learned counsel for respondent No.2 submits that all facts were considered by learned Additional Sessions Judge, Ludhiana while granting bail to respondent No.2 as it was specifically mentioned that nothing was to be recovered from him as the machinery has already been taken into possession by the Investigating Officer and custodial interrogation of respondent No.2 was not required.

Heard arguments of learned counsel for the parties and have also perused impugned order dated 05.04.2017 as well as other documents available on the file.

The relevant portion of order dated 05.04.2017 is reproduced as under: -

"xxx xxx xxx

..... On 23.11.2016, the accused/complainant appeared and was released on bail. As per the police file, the complaint to the police was filed on 4.11.2016. From the record on the police file, it is clear that the machinery as alleged by the complainant was removed in May, 2015 and the complainant remained mum for a time of around 1½ years after the removal of machinery from the factory of the complainant and the complaint was only moved when the non-bailable warrants against the complainant were issued by the Court in the complaint under Section 138 of the NI Act, when the cheque given by the complainant was dishonoured. The applicant Suresh Kumar in this case is not denying that he has taken away the machinery, but he has come with the plea that it was sold to him to settle the account. The removal of the machinery by the applicant is not in dispute, rather admitted. So, in these circumstances, nothing is to be recovered from the applicant. Record of the trucks in which the machinery was loaded, which was hired by the applicant, was already taken into possession by the Investigating Officer. So, custodial interrogation of the applicant is not at all required. Hence, the applicant is entitled to the concession of anticipatory bail. So, the bail application filed by the applicant Suresh Kumar is allowed. Interim bail granted to the applicant on 4.1.2017 is made absolute, subject to the conditions as envisages under Section 438(2) Cr.P.C. Police file be returned forthwith. The file be consigned to the record room."

Admittedly, the investigation of the case has been completed and recovery has also been effected. Challan has also been presented and now the case is fixed for framing of charges. It has come in order dated 05.04.2017 that an amount of Rs.21,62,014/- was due towards the complainant and in order to pay that amount, cheque dated 03.04.2015 for a sum of Rs.12,13,458/- was issued, which was dishonoured. Thereafter, notice was served and a complaint was filed under Section 138 of the NI Act. The complainant himself gave the delivery of the machinery for a sum of Rs.5,00,000/- towards part payment and also

promised that the cheque of Rs.12,13,458/- when presented would be encashed. As per order passed by the Court at Amloh on 07.09.2016, non-bailable warrants were issued against the accused for 23.11.2016. Thereafter, accused/complainant appeared and was released on bail. The complaint to the Police was filed on 04.11.2016 and the machinery as alleged by the complainant was removed in the month of May, 2015. The petitioner-complainant remained mum for a period of approximately 1½ years after removal of the machinery. The complainant-petitioner filed application when non-bailable warrants were issued against him by the Court before whom the complaint under Section 138 of the NI Act was pending.

By holding that nothing was to be recovered from the accused as removal of machinery is not in dispute and the truck, which was hired was taken into possession by the Investigating Officer, respondent No.2 was released on anticipatory bail as his custodial interrogation was not required.

Undisputedly, there are different parameters for grant of bail and cancellation of bail. Once the bail has been granted, the same cannot be cancelled in a mechanical manner without considering as to whether there are circumstances to show that the accused has misused the concession of bail or jumped bail but no such ground has been raised by learned counsel for the petitioner.

The grant of bail is a discretionary power, which has to be exercised in a judicious manner and not as a matter of course. At the time of granting bail, the Court has to keep in mind not only the nature of accusation but the severity of punishment and reasonable apprehension of the witnesses being tampered with or the apprehension of there being a threat to the complainant party.

In case, a person to whom the bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities, which would hamper smooth investigation or trial, bail granted can be cancelled. The rejection of bail stands on one footing but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to.

In the present case, nothing has been brought to the notice of this Court that respondent No.2 has misused the concession of bail.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is, hereby, dismissed.