Mohan Singh Vs State of Haryana and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 7, 1996

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 439(2)
Penal Code, 1860 (IPC) â€" Section 201, 302

Citation: (1997) CriLJ 2098 : (1996) 3 RCR(Criminal) 513

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: Harash Aggarwal, for the Appellant; N.S. Bhinder, B.A. Haryana and R.S. Rai, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Swatanter Kumar, J.
This petition u/s 439(2) of the Code of Criminal Procedure is for cancellation of bail granted to one Ms. Bhagwan

Dai by the learned Sessions Judge, Gurgaon vide its order dated 18-4-1995.

2. The case Under Sections 302/201 of the Indian Penal Code in FIR 81 dated 8-2-1995 was registered and said Bhagwan Dai was arrested by

the police. She filed a bail application which was granted by the learned Sessions Judge, Gurgaon vide impugned order. While granting bail, the

learned Judge noticed that the name of the accused (Bhagwan Dai) was not mentioned in the FIR and taking into consideration the nature of

allegations and the fact that the prosecution has not produced FSL report in spite of opportunities, the applicant was held entitled to be released on

bail. Consequently she was released on bail subject to her furnishing a personal bond in the sum of Rs. 10,000/- with one surety in the like amount

to the satisfaction of the Court. It is this order which is assailed before this Court, mainly on the ground that Bhagwan Dai had been specifically

named in the FIR and thus the learned Court below had erred in drawing the conclusion prima facie that she is not named in the FIR which was the

sole ground for granting the concession of bail to the said applicant. It needs to be pointed out here that certain allegations were made in paragraph

6 of this petition which were apparently baseless and consequently the petitioner was directed to be present in Court to substantiate these

allegations. Paragraph 6 of this petition reads as under:-

That the bail has been procured from the Court of the Sessions Judge, Gurgaon with the connivance of the State Public Prosecutor. Otherwise

there was no question of granting bail to Smt. Bhagwan Dai in such a henious and inhumane crime at such an early stage of the investigation of the

case even when the investigations in the case are not complete.

In furtherance to the order dated 17-11-1995, the petitioner appeared before the Court on 8-4-1996 and had filed an application withdrawing his

allegations contained in para Nos. 6 and 7(1) of the petition and also filed an affidavit tendering unqualified and unconditional apology before this

Court. After considering the application supported by an affidavit, the Court accepted apology tendered by the petitioner and allowed paragraphs,

aforestated, to be withdrawn and directed their deletion from the petition vide order dated 8-4-1996.

3. On these facts, the learned counsel for the petitioner relies upon the judgment of this case in case Saudagar Singh Vs. State of Haryana and

Another, to argue that the bail granted to Smt. Bhagwan Dai is liable to be cancelled because there was wrong appreciation of facts by the trial

Court.

4. The judgment of this Court in the case of Saudagar Singh (supra) probably cannot be said to be good law in view of the judgment of the

Supreme Court in the case of Bhagirathsinh Judeja Vs. State of Gujarat, . The Supreme Court in this judgment made distinction between the

principles which would govern grant of bail and the principles which '' will govern cancellation of bail. An order for cancellation of bail must be on

certain definite basis and must be based on very cogent and overwhelming circumstances which satisfy the judicial conscious of the Court that

liberty granted to an individual is not being misused and continuation of such liberty to that individual would not meet ends of justice and is likely to

frustrate the rules of law. The Supreme Court in the above case held as under (at page 373 of AIR):-

In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering

with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court

that in the circumstances found by him that the victim attacked was a social and political worker and therefore, the accused should not be granted

but we fail to appreciate how that circumstance should be considered soover riding as to permit interference with a discretionary order of the

learned Sessions Judge granting bail. The High Court completely over looked the fact that it was not for it to decide whether the bail should be

granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances are necessary for an order

seeking cancellation of the bail. And the trend today well-settled by a catena of decisions of this Court that the power to grant bail is not to be

exercised as if the punishment before the trial is imposed. The only material considerations in such a situation are whether the accused would be

readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. The order made by

the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a

compelling necessity to interfere with the order made by the High Court.

Learned counsel for the petitioner has not been able to satisfy this Court that the accused has hampered the prosecution case or in any way caused

prejudice to proper investigation of the case at the earlier stages. In the absence of specific averments to this effect in the petition and the fact that

no document whatsoever has been produced on record even to indicate that the said accused has misused the liberty without event, mere noticing

of a wrong fact by the trial Court by itself would not constitute sufficient ground for cancellation of the bail granted to the accused by the trial

Court. Once the Court has exercised its discretion, normally the scope of interference by this Court in a revision, for exercising such jurisdiction, is

very limited. It may neither be fair nor proper in the facts and circumstances of this case to allow this petition. Further what has also weighed with

this Court is that prosecution evidence has already been concluded and now the case is fixed for defence evidence. Applying the above settled

principles of law governing the present situation I feel that this petition lacks merit and make out no ground for cancelling the bail granted to the

accused. Consequently this petition is dismissed. There shall be no orders as to costs.