

(2004) 10 P&H CK 0035

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 48824-M of 2004

Joginder Singh

APPELLANT

Vs

Hukam Chand and another

RESPONDENT

Date of Decision: Oct. 14, 2004

Citation: (2004) 4 RCR(Criminal) 1007

Hon'ble Judges: M.M.Kumar, J

Advocate: Mr. Roopak Bansal, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.

1. This petition filed under Section 439(2) of the Code of Criminal Procedure, 1973 (for brevity, "Cr.P.C.") prays for cancellation of regular bail granted to accusedrespondent 1 by the learned Additional Sessions Judge, Jind vide order dated 21.9.2004. The basic reason which weighed with the learned Additional Sessions Judge for grant of bail appears to be that the death of deceased Kanwar Bhan has been caused by the fall of a kikkar tree when he was digging a tubewell pit along with others. The dead body of the deceased was buried in the fields of Sat Pal which was lateron recovered from the fields. The case of the prosecution appears to be based on extrajudicial confession and the name of Hukam Chand to whom the bail was granted is alleged to have been introduced lateron. It was also urged that the dead body was not recovered at the instance of Hukam Chand accusedrespondent 1.

2. Having heard the learned counsel, I do not find any ground under Section 439(2) Cr.P.C. to cancel the bail granted to Hukam Chand accusedrespondent 1 by the learned Additional Sessions Judge vide his order dated 21.9.2004. The allegation with regard to threat to any prosecution witness has not been substantiated and after the observations made by the Court, the learned counsel has only referred to the general allegations made in paragraph 7 of the petition. The considerations for cancellation of bail are entirely different than the one which prevail for grant of bail. There are various situations in which the discretion to cancel the bail could be

exercised. If a person during the period of bail commits the same very offence for which he is being tried, or has been convicted or if he hampers the investigation by forcibly preventing the search of places under his control or if he tampers with evidence by intimidating the prosecution witnesses or taking steps by destroying the incriminating evidence or if he goes beyond the control of his sureties or commits acts of violence in revenge against the police or the prosecution witnesses. In the aforementioned cases, the High Court may commit a person back to jail under Section 439(2) Cr.P.C. Reference, in this regard, may be made to the judgment of Supreme Court in the case of State (Delhi Administration) v. Sanjay Gandhi, 1978(2) SCC 411. None of the aforementioned grounds has been substantiated by the petitioner which may warrant exercise of jurisdiction under Section 439(2) Cr.P.C. Therefore, the instant application is liable to be rejected.

For the reasons stated above, this petition fails and the same is dismissed.