

(2012) 04 DEL CK 0410

Delhi High Court

Case No: Criminal M.C. 738 of 2010

Sanjeev Gupta

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: April 13, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 308, 325, 34

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Anil Soni, for the Appellant; Mukesh Gupta, APP for the State with SI Ranjeet Singh, PS Roop Nagar and Mr. Bharat Dubey, Advocate for Respondent Nos. 2 to 4, for the Respondent

Final Decision: Dismissed

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioner seeks cancellation of bail of Respondent Nos. 2 to 4 in case FIR No. 1 of 2009 under Sections 325/308/34 IPC registered at PS Roop Nagar, Delhi. Learned counsel for the Petitioner contends that on 15th December, 2008 the Petitioner was assaulted by the accused person wherein he received grievous injuries as is evident from the discharge summary of Sant Parmanand Hospital. However, the police did not register the FIR immediately and only on 1st January, 2009, the abovementioned FIR was registered u/s 325/34 IPC, which is a bailable offence. Section 308 IPC though attracted was added later on and the learned Trial Court has also framed charge against Respondent Nos. 2 to 4 for offence u/s 308 IPC. On 2nd April, 2009, Respondent Nos. 2 to 4 were granted anticipatory bail because the Investigating Officer concealed material facts before the learned Trial Court. Immediately on grant of anticipatory bail, Respondent Nos. 2 to 4 again assaulted the Petitioner on 24th May, 2009 and with a great difficulty another FIR No. 118/2009 was lodged under Sections 325/34 IPC at PS Roop Nagar.

Thereafter again on 3rd August, 2009, Respondent Nos. 2 to 4 attacked on the Petitioner however, no FIR has been registered by the police despite statement of the Petitioner having been recorded. According to the learned counsel, Respondent Nos. 2 to 4 are constantly threatening the Petitioner and his family members. Thus, on 17th September, 2009 the Petitioner filed an application for cancellation of the bail of Respondent Nos. 2 to 4 before the learned Trial Court. However, by the order dated 1st December, 2010 the said application was dismissed and thus the Petitioner has filed the present petition. It is further submitted that in FIR 118/2009 the police deliberately filed a cancellation report on 8th August, 2009 though the statement of the wife of the Petitioner was recorded on 30th November, 2009. The Petitioner received a back dated letter of 24th May, 2009 on 10th May, 2010 stating that the police has closed the case of the Petitioner.

2. Learned counsel for Respondent Nos. 2 to 4 on the other hand contends that the Petitioner is a habitual litigant and has already taken money from Respondents Nos. 2 to 4 for vacating the premises, however, he is still not satisfied and is filing the present applications for extorting more money. The Petitioner is living in Sonapat and there is no contact between the Petitioner and Respondents Nos. 2 to 4. Not only the behaviour of the Petitioner with Respondent Nos. 2 to 4 is abusive and quarrelsome but also the Petitioner is in a habit of quarrelling with everybody. When the PCR took him to the Hindu Rao Hospital for the incident dated 15th December, 2008 he even quarreled with the doctor and wanted the doctor to opine the injury to be dangerous in nature. When the doctor did not accede to the request of the Petitioner, he left the hospital without medical advice. Thereafter he went to Sant Parmanand Hospital and the same being a private hospital, the Petitioner got manipulated the documents. A perusal of the MLC of the Hindu Rao Hospital and Sant Parmanand Hospital would show a striking difference in nature of injuries opined. According to the Sant Parmanand Hospital the Petitioner suffered a fracture and in such a situation, no person can move. After the alleged incident, three years have lapsed and there is no incident of violence committed by Respondent Nos. 2 to 4. Thus the liberty of the Respondent Nos. 2 to 4 be not curtailed on the uncorroborated and unverified allegations of the Petitioner. The Petitioner is a habitual litigant and keeps on fighting with the people and thus ten other people have also filed complaints against the petitioner.

3. I have heard learned counsel for the parties.

4. Briefly the case of the prosecution is that on 15th December, 2008 an information was received at PS Roop Nagar vide DD No. 22A from PCR regarding a quarrel on second floor of House No. A-28, Kamla Nagar. The Petitioner sustained injuries and was taken to Hindu Rao Hospital for treatment in PCR van. His MLC was prepared which stated that smell of alcohol was present. Later on, the Petitioner left the hospital without medical advice on 16th December, 2008 and got himself admitted at Sant Parmanand Hospital. After getting opinion on the MLC, the abovementioned

FIR was registered. On 9th January, 2009 the investigation of the case was transferred to the District Investigation Unit, North East District. On 2nd April, 2009 Respondent Nos. 2 and 3 were granted anticipatory bail by the learned Additional Sessions Judge and on 11th August, 2009 a regular bail by the learned Metropolitan Magistrate. The charge sheet was filed for offence under Sections 308/325/34 IPC on 8th July, 2009 and charge was framed against Respondent Nos. 2 & 3.

5. The main contention of the Petitioner for cancellation of bail is that after the anticipatory bail the Petitioner has been again assaulted by Respondent Nos. 2 to 4 on 24th May, 2009 for which FIR No. 118/2009 under Sections 325/24 IPC has been registered. It may be noted that in the said FIR, since no evidence came on record in support of the version of the Petitioner, a cancellation report has already been filed. The Complainant and Respondent Nos. 2 to 4 are cousin brothers living in the same building however, having estranged relations. Since the allegations of again assaulting the Petitioner by the Respondent Nos. 2 to 4 after having been granted anticipatory bail have not been substantiated, prima facie there is no case for cancellation of bail. Further the cancellation of bail is a serious matter and has to be sparingly resorted to as held by the Hon'ble Supreme Court in [D.K. Jain and Others Vs. State of Haryana and Others](#). The relevant para of the report reads as under:

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.

Hence, I find no merit in the present petition. Petition is dismissed.