

(2012) 05 DEL CK 0655

Delhi High Court

Case No: Criminal Rev. P. No. 532 of 2011

Mohan Singh Rana and Others

APPELLANT

Vs

State

RESPONDENT

---

**Date of Decision:** May 11, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Penal Code, 1860 (IPC) - Section 120B, 201, 218, 302, 304

**Citation:** (2012) 6 AD 132 : (2012) 2 JCC 1299**Hon'ble Judges:** M.L. Mehta, J**Bench:** Single Bench

**Advocate:** R.M. Tufail and Mr. A. Aggarwal, for the Appellant; M.N. Dudeja, APP for the State Mr. A.T. Rao, for the complainant. and Mr. P.K. Sharma for the CBI with Mr. Uday Prakash Yadav, for the Respondent

**Final Decision:** Dismissed

---

**Judgement**

M.L. Mehta, J.

This revision petition assails the order dated 17th November, 2011 of Special CBI Judge whereby on the application of the Complainant, the bail granted to the petitioners was cancelled in CBI Case RC No. 6/2009 u/s 120B read with Sections 302/364/201/218 IPC registered at P.S. Dalanwala, Dehradun. 18 persons were arrayed as accused Nos. 1 to 18. Accused at serial No. 1 to 7 were granted bail by the High Court of Uttrakhand on 20th January, 2010. Aggrieved thereby, the complainant who is the father of the deceased filed two petitions before the hon'ble Supreme Court. One of those petitions was for transfer of the case from Dehradun and another was for cancellation of the bail of the accused persons 1 to 7 granted by the Uttrakhand High Court. The Hon'ble Supreme Court vide its order dated 17th March, 2011 set aside the order of granting bail to the accused 1 to 7 and transferred the said case from Uttrakhand to Delhi. This decision of the Supreme Court is reported in Ravinder Pal Singh vs Ajit Singh & Ors. 2011(4) SCC 238.

2. The present petitioners are the accused at serial No. 8 to 18 in the said case. They were granted bail by the Sessions Judge, Dehradun vide orders dated 1st May, 2010 and 13th May, 2010. The operative part of both the orders is as under:-

Ld. Public Prosecutor, CBI, Dehradun has submitted his arguments in the light of the report of the IO, a brief description of which has been given above. Ld. Public Prosecutor has submitted that the IO has clearly stated that the above accused persons have committed the substantive offence u/s 201 IPC by giving false information to screen the offenders of Section 364/302 IPC. An offence i.e. U/s 201 IPC entails punishment upto seven years (and fine) and three years (and fine) in different contingencies. According to the First Schedule of Cr.P.C. an offence u/s 201 IPC is a bailable offence although triable by the Court of sessions. Considering above aspect of the matter, the applicant/accused persons deserve bail.

After the transfer of the case from Dehradun to Delhi, the charges were framed by the learned Special Judge against all the accused persons u/s 120B read with Section 304/302/201/218 IPC. The learned Special Judge for cancelling the bail of the petitioners vide impugned order reasoned that when the petitioners were granted bail by the Sessions Judge, Dehradun they were chargesheeted u/s 218 IPC for the substantive offence, which was bailable and now since the charges against the petitioners and all the other accused have been framed u/s 120B read with Section 304/302/201/218, which are non-bailable, the benefit of bail granted to them earlier by Dehradun Court, was not available.

3. In the case of Prahalad Singh Bhati Vs. NCT of Delhi, AIR 2001 SC 1444, it has been held that the jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the

circumstances of each case and not in an arbitrary manner. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused in the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public or the State and similar other considerations. In the present case, the Hon"ble Supreme Court held that enlarging the accused in case of murder on bail merely on the grounds that he was initially granted bail for the minor offence, was not proper when an aggravated charge u/s 302 IPC was added to the charge sheet. It was held thus:

9..... the mere initial grant of anticipatory bail for lesser offence did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to the minor offence, if the offence is altered for an aggravated crime.

4. In the case of Prakash Kadam Vs. Ram Prasad Vishwanath Gupta and Ors., 2011 V AD (SC) 609, it has been thus observed:

17. However, we are of the opinion that it is not an absolute rule, and it will depend on the facts and circumstances of the case. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima face case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate revisional Court.

18. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail

5. The Hon"ble Supreme Court in the order of cancellation of bail of accused No. 1 to 7 in the petition filed by the complainant in Ravindra Pal Singh (supra) had observed thus:

10. We have considered the submissions made by the learned counsel. We are of the considered opinion that the allegations made against the respondent cannot be brushed aside at this stage. CBI after investigation of the matter has already submitted the charge sheet. According to the prosecution all the accused were involved in the fake encounter in which an innocent young man lost his life. The High Court also ought to have taken into consideration the serious nature of the allegations, the possibilities of undue influence being exerted on the witnesses for the prosecution at the instance of the police officials. In our opinion, the High Court committed serious error in granting bail to the respondents.

6. It is matter of record that the petitioners who are police officers evaded their arrest for the period of 9-10 months from the date of offence, though, they were on their duty and managed to manipulate the charge sheet in such a way that they were charged under bailable offence. During the course of trial, several witnesses have turned hostile and resiled from their statements u/s 164 CrPC, which lends strength to the submission of the prosecution that they were involved in influencing the witnesses. Moreover, the offences with which the accused persons are charged are grave in nature and merely because the trial would take a long time, is no ground for the grant of bail in such a serious case. Having regard to the principles laid down for grant and cancellation of bail in the above judicial pronouncements and the peculiar facts and circumstances of the case, I do not find any infirmity or illegality in the order passed by CBI Special Judge in cancelling the bail of the Petitioners. The revision petition, being without any merit is hereby dismissed.