



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-33865-2023

Date of Decision:-04.02.2025

Tofik.

.....Petitioner.

Versus

The State of Haryana & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Vipul Aggarwal, Advocate with
Ms. Sunita Gupta, Advocate for the Petitioner.

Mr. Viney Phogat, Deputy Advocate General, Haryana.

Mr. Ruhani Chadha, Advocate
Amicus Curiae for the respondent no.4.

JASJIT SINGH BEDI, J.

The Prayer in this petition under section 439(2) read with Section 482 Cr.PC is for cancellation of regular bail granted vide order dated 03.11.2022 (Annexure P-6) to respondent no.4 in FIR No.130 dated 16.5.2022 under Sections 201, 302, 34 IPC registered at Police Station Utawar, District Palwal.

2. The brief facts of the case are that FIR No.130 dated 16.5.2022 under Sections 201, 302, 34 IPC registered at Police Station Utawar, District Palwal came to be registered at the instance of one Tofik son of Sh. Tolla and reads as under:-

“ To SHO, Police Station Utawar. Subject:
Application for taking legal action against:- 1. Sahil, 2.
Adil sons of Saikul, 3. Saikul son of Asraf residents of



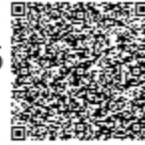
village Bhodpur Tehsil, Hathin presently residing at Uttawar Colony, Near Utawar Police Station, 4. Samaydeen @ Bhara son of Juhru village Beel Singhpur Police Station Kishangarh District Alwar, 5. Arbaj son of Ratti, 6. Bhajan so of Aasin, 7. Aarif son of Kirori residents of village Utawar Tehsil Hathin, 9. Satbir son of Subdeen, 9. Shamshu son of Haroon Village Pachanka at present resident of village Dhirakni Hathin behind the court and 4-5 other unknown persons. Sir, it is requested that I, Tofique son of Tolla is the resident of village Singar, Police Station Bicchor District Nuh. My brother Shokeen was truck driver, working as driver with Saikul son of Asraf (Foreman). That on 15.02.2022 at about 1.00 PM one telephone call was received on my telephone number 9306001141 from telephone no.9050572879 of Sahil etc that my brother Shokeen had sold the diesel of their truck, to come at their house at the turn of Uttawar along with their money otherwise they would kill my brother Shokeen. Thereafter Saikul etc. got arranged a talk of me with my brother Shokeen. Shokeen told while weeping on phone that I should come immediately alongwith money, otherwise these people 1. Sahil, 2. Aadil sons of Saikul, 3. Saikul son of Asraf residents of village Bhoodpur presently at Utawar Mode, 4. Samaydeen @ Bhara, 5. Arbaj 6. Bhajan, 7. Aarif residents of village Utawar, 8. Sabbir, 9. Shamshu resident of Pachanka presently at Hathin and other 4-5 unknown persons would kill him. These persons had badly beaten him and told to immediately reach at the house of Saikul at Uttawar turn along with money. After sometime, I came to knew that Saikul etc. had also demanded money from Deen Mohammed son of Umed resident of village Bhod, Police Station Ferozepur Jhirka (Nuh) on his telephone No.9813653863 from telephone No.9050572879 and also got talked with Shokeen. Deen Mohammed is the father-in-law of Shokeen. Deen Mohammad told me that they had threatened to



immediately come along with the money at the house of Saikul at Uttawar turn, failing which they would kill Shokeen. Thereafter, when I along with Deen Mohammad, Wajid son of Jakir resident of Bhod and my family members reached at Saikul's house at Uttawar turn along with money on 15.05.2022 at about 5 PM then many people were gathered there and the persons standing there told us that Saikul etc. and 10-15 other persons collectively gave beatings to one person and due to which he died and people was telling his name Shokeen. They also told us that Saikul etc. have taken away the body of deceased Shokeen by putting in a Car for destroying. That I and my family were searching the Shokeen at own till now. That we came to know that Saikul etc. has fled away by leaving the dead body of my brother Shokeen in the house of Sabbir at Hathin and thereafter, we came to know that the police has kept the dead body of Shokeen in GH Palwal and we identified the dead body of Shokeen by reaching there. That legal action be initiated against the above all accused. That today on 16.05.2022, I came to be police station Uttawar for initiating action. Sd/- Tofique applicant Tofique son of Tolla resident of Sinagar Police Station Bicchor, Nuh (Mewat) 9306001141 Dt. 16.5.2022."

3. During the course of the investigation, on examination of the material on record including a video contained in a Pen Drive along with photographs respondent no.4 came to be nominated as accused. The report under Section 173(2) Cr.PC was submitted.

4. The respondent no.4 sought the concession of regular bail and the court of ADJ, Palwal granted bail to the said respondent no.4 by recording a finding that there was nothing on record against him except the disclosure statement of a co-accused Sahil and the respondent no.4 himself. A copy of the said order dated 03.11.2022 which is impugned in the present



petition is Annexure P-6.

5. The Petitioner/complainant sought cancellation of the bail granted to respondent no.4 on the premise that other than the confessional statement of a co-accused there was video footage showing the respondent no.4 and others assaulting the deceased. The said footage was the part of challan but had not been seen and considered by the Court of ADJ, Palwal while granting bail to the respondent no.4 and, therefore, the bail granted ought to be cancelled.

6. This Court on consideration of the matter permitted the petitioner/complainant to withdraw the said petition with liberty to approach the Court of ADJ, Palwal at the first instance. The copy of the said order passed in CRM-M-10347-2023 is attached as Annexure P-8 to the petition.

7. In furtherance of the aforementioned order the petitioner/complainant sought cancellation of the regular bail before the court of ADJ, Palwal and the said Court dismissed the said petition on the premise that cancelling bail granted by the court would amount to reviewing of an order which was not permissible. The copy of the said order dated 18.05.2023 is on record as Annexure P-11.

8. Therefore, the instant petition has been filed.

9. When this petition was filed, all the counsels were requested to examine the video footage to see whether there was any role played by the respondent no.4 and for the said purpose the IO of the case, namely, ASI Nepal Singh was also directed to be present in Court.

10. The Counsel for the petitioner contends that though the respondent no.4 was not named in the FIR a video recording of the occurrence was a part of the report under Section 173(2) Cr.PC which shows the respondent no.4 and others beating up the deceased. Bail had been



granted to him without considering the entire material on record only on the premise that he had been named in the disclosure statement of his co-accused. As the order had been passed on untenable grounds, the said order was liable to be set aside and bail granted to the respondent no.4 be cancelled. Reliance is placed on the judgments of Hon'ble Supreme Court in ***Rizwan Akbar Hussain Syed Vs. Mehmood Hussain & Anr. 2007(4) RCR (Criminal) 27*** and ***Brij Nandan Jaiswal Vs. Munna @ Munna Jaiswal & Anr. 2009(1) RCR (Criminal) 529.***

11. Despite service none appeared on behalf of the respondent no.4 & others and this Court was constrained to appoint an Amicus Curiae to assist it. The Learned Amicus Curiae has argued vehemently but admits that the video footage shows the respondent no.4 and others assaulting the deceased.

12. The Counsel for the State on instructions from IO ASI Nepal Singh who is present in Court and on perusal of the video footage admits that the respondent no.4 and other accused are seen assaulting the petitioner.

13. I have heard Counsel for the parties and examined the footage as well.

14. As regards cancellation of bail, the Hon'ble Supreme Court in ***Rizwan Akbar Hussain Syed's case (supra)*** held as under:-

“ 8. *Learned Single Judge seems to have taken exception for non-appearance of the appellant at the time of hearing of the application for cancellation of bail. The reason for non-appearance has been explained by the appellant. It is true that in the order granting bail, there was no specific stipulation of any condition. In fact, in the petition for cancellation of bail, the respondent No. 1 has stated that while granting bail, no conditions were imposed. In that sense, the appellant is right that the High Court has erroneously observed that the conditions for grant of bail were violated. There was no specific condition*



imposed and, that was one of the grievances of the respondent No. 1. But learned counsel for the respondents rightly submitted that even if no condition is specifically stipulated, the accused, while on bail, is not supposed to tamper with evidence. There is no specific observation in this regard in the impugned order. Cancellation of bail should not be done in a routine manner. Where it appears to the superior Court that the Court granting bail acted on irrelevant materials or there was non-application of mind or where Court does not take note of any statutory bar to grant of bail, order for cancellation of bail can be made. These circumstances are illustrative and not exhaustive. The Court considering the application for cancellation of bail has to take note of all relevant aspects.”

15. The Hon’ble Supreme Court in ***Brij Nandan Jaiswal’s case*** (*supra*) held as under:-

“ 7. It is now a settled law that complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also. In our opinion, therefore, the complainant could question the merits of the order granting bail. However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter. While granting bail, particularly in serious cases like murder some reasons justifying the grant are necessary.”

16. Thus apparently, the law is well settled that one of the grounds for cancellation of bail is where it has been granted on the basis of irrelevant material or where material facts have been over looked by the concerned Court.

17. In the instant case, the respondent no.4 was granted the concession of bail on the premise that the only piece of evidence against him was the confessional statement of his co-accused. This is absolutely



incorrect. The report under Section 173(2) Cr.PC is accompanied with video and photographs showing the respondent no.4 and other accused assaulting the deceased. Had this material been brought to the notice of the Court and considered by it, possibly, the bail might not have been granted.

18. In view of the aforementioned discussion, I find considerable merit in this petition and, therefore, the same is allowed and the order dated 03.11.2022 (Annexure P-6) is set aside and the bail granted to the respondent no.4 is cancelled. He is directed to surrender forthwith and seek bail if so advised and the Court concerned shall consider and decide his bail application if any based on the entire material on record.

19. A copy of this order be sent to the office of Superintendent of Police, Palwal for necessary compliance.

(JASJIT SINGH BEDI)
JUDGE

February 04, 2025

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>