

Before Rajesh Bindal, J.

DAKSHI—Petitioner

versus

STATE OF PUNJAB—Respondent

CRM. No. 10956 of 2012

IN CRM No.M-37578 of 2010

July 01, 2013

Indian Penal Code, 1860 - Ss. 420 & 120-B - Code of Criminal Procedure, 1973 - S. 438 (2) - Accused in connivance with other accused was running a chit fund company whereby they allegedly cheated small time investors - FIR registered - Bail granted by Session Court - Cancellation of bail sought - Benefit of lapse on the part of Investigating Agency taken by the accused - Facts of involvement of the accused in five different cases also not brought before the court - Conduct of the accused which is relevant for cancellation/grant of bail was not taken into consideration by court below - Notice issued and bail granted on 23/2/2011 by Additional Sessions Judge Bathinda cancelled.

Held, that it is a case where the accused took full benefit of lapse on the part of the Investigating Agency or there being no system in place for sharing of data pertaining to an accused. Accused-Rajesh Kumar was involved in five different cases registered at different places involving similar offence. In none of the cases, it was pointed out before the court that he is involved in other case which could be a relevant factor for grant or refusal of concession of bail. Because of lapse he was granted exemption from personal appearance in one case, whereas in others, he had been declared proclaimed offender. His conduct was also not brought before the court. The investigation of the crime had also not been upto the mark. No efforts were made to find out as to where the amount collected from poor public was deposited and ultimately transferred. Even after registration of the FIR, substantial amount was withdrawn from the accounts of the company as well as the accused. The figures, as given in the affidavit of Manmeet Singh, Deputy Superintendent of Police, State Cyber Crime Police Station, SAS Nagar dated 29.5.2013 show that for the period the accounts were checked by the Investigating Agency, more than Rs.37 crores were deposited in different accounts maintained at different places, out of which entire amount was withdrawn or transferred to different accounts and only Rs. 1.36 crores remained balance. As to in which account the amount was transferred was not investigated properly to find out the beneficiaries. The crime committed by the accused was taken quite lightly, may be because the complainants were small time investors. No holistic view was taken considering the fact that the accused was involved in five different cases registered at different places with similar allegations.

(Para-15)

Further held, that before parting with the order, this court would like to place on record a word of caution for the Investigating Agencies to sensitize the Investigating Officers and also put a system in place whereby details about an accused being involved in different cases is available with the Investigating Agencies in all the cases and the courts concerned are also apprised about the same. It shall not be limited to the pending cases. Even the cases in which persons had been accused, may be acquitted or convicted or have already undergone sentence, are also relevant to be placed before the court, after the accused are arrested, as the same may be relevant for the purpose of consideration of their prayer for anticipatory bail, regular bail, conviction and/or sentence.

(Para 18)

Ravish Bansal, Advocate for Ashok Singla, Advocate for accused-
Rajesh Kumar.

V. Ramswaroop, Addl. Advocate General, Punjab.

M. K. Garg, Advocate for the complainant.

RAJESH BINDAL J.

(1) The present proceedings pertain to the notice issued by this court on 28.9.2011 to accused Rajesh Kumar (hereinafter referred to as 'the accused') for cancellation of bail granted to him by Additional Sessions Judge, Bathinda on 23.3.2011.

(2) The accused herein is involved in following cases along with other persons, who include his family members:

(i) FIR No. 221 dated 17.9.2010, under Sections 420, 120-B IPC, 4, 5 and 6 of the Prize Chest and Money Circulation Scheme Act, 1978, Police Station, Mansa.

(ii) FIR No. 3 dated 5.1.2012, under Section 420 IPC, Police Station, Kotwali, Patiala.

(iii) FIR No. 91 dated 2.4.2011, under Section 306 IPC, Police Station, City Rajpura.

(iv) FIR No. 199 dated 5.12.2010, under Sections 420, 120-B IPC, Police Station Model Town, Ludhiana.

(v) FIR No. 140 dated 14.11.2010, under Sections 420, 120-B IPC, Police Station, Civil Line, Bathinda.

(3) The accused in connivance with other accused named in the FIRs is primarily running a chit fund company, whereby they allegedly cheated lot of small time investors of their hard earned money. The transactions in the accounts of the company and the accused are running into crores of rupees, which were deposited and withdrawn. The details thereof, as

furnished in the affidavit of Manmeet Singh, PPS, Deputy Superintendent of Police, State Cyber Crime Police Station, SAS Nagar dated 29.5.2013, are extracted below:

"Sr. No.	Name of Bank	Amount deposited in rupees (approximate)	Amount withdrawal (in rupees)	Balance (in rupees)
1.	AXIS bank (28 Account)	34,65,88,359/-	33,84,62,244/-	81,26,115/-
2.	Punjab National Bank Jaipur	1,74,57,136/-	1,74,26,299/-	30,837/-
3.	ICICI Bank Hisar	59,98,953/-	5,08,666/-	54,90,287/-
	Total:	37,00,44,448/-	35,63,97,209/-	1,36,47,239/-

(4) The issue came up for consideration before this court in four separate applications for anticipatory bail filed by different accused in FIR No. 140 dated 14.11.2010, under Sections 420, 120-B IPC, registered at Police Station, Civil Lines, Bathinda. The other accused named in the FIR are wife, sister and two sons of two different sisters. As the return promised to the investors was not granted and the money was not returned back, the FIR in question was registered. During the course of hearing of the aforesaid four anticipatory bail applications, it transpired that in the accounts maintained by the company and the accused, crores of rupees were deposited and transferred in some other accounts. Some of the withdrawals running into crores of rupees were made by the accused themselves. The investigation in the present case had not been carried out properly to find out the accounts in which crores of rupees had been transferred and the accused had been granted bail. As has been noticed above, the accused was involved in five cases registered at different places. Apparently, all these facts were not brought to the notice of the courts where different cases were pending pointing out the gravity of the offence committed by the accused and also his conduct.

(5) While declining pre-arrest bail to the other accused in the FIR, this court issued notice to accused Rajesh Kumar to show cause as to why bail already granted to him be not cancelled by observing as under:

"The information as is available with the learned State counsel on instructions from SI Mohan Singh, shows that transfers running into crores of rupees, as has been noticed above, have not been explained.

The accused Rajesh Kumar, even after his arrest, apparently was not asked as to whom the money was transferred. Investigating Officer is not aware of the identity of Jaivir in whose account 30 lacs were transferred. Apparently investigation is shady and challan has also not been presented till date. There are two other FIRs against the accused. The order passed by the Additional Sessions Judge, Bathinda dated 23.3.2011 granting bail to Rajesh Kumar has been produced in Court. It has been mentioned therein that he was arrested on 5.2.2011 and is no more required by the Investigating Agency for further interrogation or recoveries, whereas from the facts which have been projected before the Court it is evident that proper investigation had not been carried out. The Court below was not even apprised of the fact that Rajesh Kumar is accused in two other FIRs registered against him at Mansa and Ludhiana. Apparently the amount involved in the case was also not brought before the Court as he was directed to be released merely on furnishing of personal bonds of Rs. 50,000/- with one surety of the same amount. It is not known to the Investigating Officer present in Court today as to whether Rajesh Kumar was arrested in other two FIRs registered against him with similar allegations or not.

Let a notice be issued to Rajesh Kumar son of Raghubir Singh, resident of village Balsamand, Police Station Sadar, Hisar, District Hisar as to why bail granted to him by the learned Additional Sessions Judge, Bathinda on 23.3.2011 be not cancelled for 1.11.2011."

(6) On 21.5.2012, noticing that the accused is stated to be in custody in Central Jail, Patiala in FIR No. 91 dated 2.4.2011, registered under Section 306 IPC at Police Station Rajpura City, it was directed that the accused shall not be released in case he is already in custody. On 11.10.2012, the court was informed that the accused had been released from custody in the aforesaid case despite restraint order by this court. Though this court restrained release of the accused from custody on 21.5.2012, however, as is evident from the facts of the case, the order passed by this court was not brought to the notice of the court concerned and he was granted bail on 28.5.2012 and was released on the same day. Even the accused, who was duly represented through a counsel before this court, did not point out before the court concerned that there is a restraint on his release from jail.

(7) As the accused had been released after passing of restraint order by this court, the Investigating Officer was directed to take him in custody before taking up the case for cancellation of bail. Then started the race of cat and mouse. The accused absconded. It was pointed out before the court that he was involved in five criminal cases registered at different places. When all efforts made by the Investigating Agency to arrest the accused remained futile, on 31.1.2013, this court noticed the facts that the accused is involved in five different cases, in two of them the accused had misused the concession of bail where non-bailable warrants had been issued against him and further that in one of the FIRs, where the accused was to appear, an application was filed for exemption from personal appearance, which was allowed irrespective of the fact that non-bailable warrants had been issued against the accused in other cases. This was apparently for the reason that it was not pointed out to all the courts concerned by the Investigating Agency that he was involved in other cases and further his conduct in those cases, which is always relevant for the purpose of consideration of anticipatory or regular bail application of an accused or even at the stage of conviction or sentence. There is either lapse or connivance or no system in place of which undue benefit is being taken by the accused.

(8) On the aforesaid date of hearing, learned counsel for the complainant produced before the court copies of various accounts maintained by the company and the accused in different banks. The banks maintaining the accounts of the company and the Directors thereof were restrained from permitting any transaction except with the permission of the Court.

9. On 27.2.2013, learned counsel for the State pointed out that a sum of Rs. 1,19,00,000/- was found lying in various bank accounts maintained by the company and the accused. He sought time to find out inflow and out-flow of money from various accounts maintained by the company and all the accused involved therein. Considering the fact that apparently number of small investors had been cheated and the matter required examination of accounts, Director General of Police, Punjab was directed to consider transfer of investigation of the case to any other wing. On the next date of hearing, it was submitted that investigation of the FIR has been transferred to Crime Wing under the direct supervision of DIG/Cyber Crime.

(10) On 2.4.2013, learned counsel for the State pointed out that the Investigating Agency has been able to find out the details of various accounts maintained by other accused in the FIR. This Court directed seizure of all the accounts and further conversion of the amounts lying therein in FDRs. It was only thereafter that accused-Rajesh Kumar surrendered in the court on 8.4.2013 and presently is in custody.

(11) The other two accused, namely, wife and sister of accused-Rajesh Kumar never joined investigation and they have been declared proclaimed offenders. It is in the aforesaid factual matrix that the case of accused-Rajesh Kumar is to be considered for cancellation of bail.

(12) The contention of learned counsel for accused-Rajesh Kumar is that in the FIR in question, he was arrested on 5.2.2011 and after 46 days in custody was released on regular bail on 23.3.2011. Finally, he was released from jail on 28.5.2012 after he got bail in other cases as well. Thereafter, he did not put in appearance in any case and surrendered on 8.4.2013 and is in custody since then. The details of all the accounts were with the Investigating Officer. The charge against the accused is yet to be proved. No evidence has been led. The accused has not violated any of the conditions of bail or tampered with the evidence. There are different parameters for grant or cancellation of bail. The accused is ready to furnish any surety.

(13) On the other hand, learned counsel for the State and the complainant submitted that the accused is involved in five different criminal cases involving cheating poor public. He has squandered crores of rupees by cheating poor public of their hard-earned money. Considering his conduct, where he did not put in appearance before the court for a period of more than 10 months and further surrendered only after all his accounts were seized, he does not deserve any sympathy and the concession of bail already granted to him deserves to be cancelled.

(14) Heard learned counsel for the parties and perused the paper book.

(15) It is a case where the accused took full benefit of lapse on the part of the Investigating Agency or there being no system in place for sharing of data pertaining to an accused. Accused-Rajesh Kumar was

involved in five different cases registered at different places involving similar offence. In none of the cases, it was pointed out before the court that he is involved in other case which could be a relevant factor for grant or refusal of concession of bail. Because of lapse he was granted exemption from personal appearance in one case, whereas in others, he had been declared proclaimed offender. His conduct was also not brought before the court. The investigation of the crime had also not been upto the mark. No efforts were made to find out as to where the amount collected from poor public was deposited and ultimately transferred. Even after registration of the FIR, substantial amount was withdrawn from the accounts of the company as well as the accused. The figures, as given in the affidavit of Manmeet Singh, Deputy Superintendent of Police, State Cyber Crime Police Station, SAS Nagar dated 29.5.2013 show that for the period the accounts were checked by the Investigating Agency, more than ' 37 crores were deposited in different accounts maintained at different places, out of which entire amount was withdrawn or transferred to different accounts and only Rs. 1.36 crores remained balance. As to in which account the amount was transferred was not investigated properly to find out the beneficiaries. The crime committed by the accused was taken quite lightly, may be because the complainants were small time investors. No holistic view was taken considering the fact that the accused was involved in five different cases registered at different places with similar allegations.

(16) Besides this, the conduct of the accused is also evident from the affidavit dated 29.5.2013 filed by Manmeet Singh, Deputy Superintendent of Police, State Cyber Crime Police Station, SAS Nagar, wherein it is mentioned that after grant of bail, the accused had been absented from the court. Non-bailable warrants were directed to be issued. In FIR No. 199 dated 5.12.2010, registered under Sections 420, 120-B IPC, Police Station, Model Town, Ludhiana, he was declared proclaimed offender on 9.4.2013. Still further, despite the fact that on 21.5.2012, this court restrained release of the accused from jail in case he was in custody, without pointing out the aforesaid order to the court concerned or Jail Superintendent, where he was in custody, he was able to get himself released on 28.5.2012. It is not that the accused is only guilty for this. Even the Investigating Agencies are equally responsible, as the order passed by this court was not brought to the notice of the concerned persons/court. The conduct of the accused even

after he was released on 28.5.2012 shows that he has no respect for law. He hoodwinked the Investigating Agency for more than 10 months and surrendered only after the accounts maintained by the company, the accused and other Directors, the information of which could be collected, were seized and all transactions therein were stopped.

(17) Considering the aforesaid circumstances, in my opinion, the bail already granted to accused-Rajesh Kumar on 23.3.2011 deserves to be cancelled. Ordered accordingly.

(18) Before parting with the order, this court would like to place on record a word of caution for the Investigating Agencies to sensitize the Investigating Officers and also put a system in place whereby details about an accused being involved in different cases is available with the Investigating Agencies in all the cases and the courts concerned are also apprised about the same. It shall not be limited to the pending cases. Even the cases in which persons had been accused, may be acquitted or convicted or have already undergone sentence, are also relevant to be placed before the court, after the accused are arrested, as the same may be relevant for the purpose of consideration of their prayer for anticipatory bail, regular bail, conviction and/or sentence.

(19) The file be consigned to records.

A. Jain