

Punjab and Haryana High Court cancels bail given by judge to her distant relative

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The Punjab and Haryana High Court on Friday cancelled an order giving regular bail to an accused in a criminal case after finding that the trial judge who passed the bail order was his distant relative [Akash Walia v State of Haryana].

The Court had earlier sought a response from the Judicial Magistrate Ist Class (JMIC) Vandana, who had made the bail order. The High Court had also asked its Registrar General to inform it about any inquiry undertaken in this respect on the administrative side.

In the order passed today, Justice Sumeet Goel said that the inquiry proceedings as well as judge Vandana's own comments showed that she and the accused were relatives, "**though apparently distant ones.**"

Finding that the trial judge was aware of it, Justice Goel stated that the bail order deserved to be set aside.

"The peculiar factual conspectus of the case in hand as also the material available before this Court, clearly reflect that the concerned Magistrate was aware of her consanguinity with the respondent No.2. When examined through the objective of a prudent and reasonable individual, this factum inexorably leads to the conclusion that a manifest apprehension of partiality, forming bias-in-law, is decipherable on part of

the concerned Magistrate, rendering the impugned Order, untenable ab initio. The severity of this legal infirmity is exacerbated by the fact that the impugned Order was made by the concerned Magistrate while sitting in vacation roster. Ergo, in all the fairness, the impugned order deserves to be set-aside on this score," the High Court decided.

However, the Court declined to order any action against the magistrate, thinking that the matter was being "ruminated upon" on the administrative side.

"The impugned order is quashed and the regular bail granted to respondent No.2 (herein) is set-aside/cancelled," the Court ruled.

The decision was delivered on a plea seeking the cancellation of bail granted to one, Reshab Walia by the JMJC in the case filed under Sections 195A (threatening any person to give false evidence) and Section 506 (criminal intimidation) of the Indian Penal Code (IPC).

The petition before the High Court was brought by the complainant in the case, Akash Walia, who claimed that the judicial officer Vandana is the cousin sister of the accused Reshab Walia. He argued that judge Vandana ought not to have heard the case.

While cancelling the bail order today, the High Court also noted that a considerable time had passed since the regular bail was given to the accused. It, thus, ruled that cancellation of the bail with immediate effect would constitute a miscarriage of justice

Granting a partial relief to the accused, the Court asked him to appear before the Ambala CJM or duty judge on or before December 23.

Till then, the accused shall continue to stay on bail. When he comes before the trial court, his bail plea is to be decided on the same date.

"In case he so causes appearance and makes a plea for grant of regular bail, the same shall be positively decided on the same day. In case respondent No.2 does not so cause appearance, said CJM shall take requisite steps to secure his presence and send him to custody, as per law," the Court ruled.

In its ruling, the Court further highlighted that a judge having personal stake or interest in the

subject matter or the result, howsoever small, is viewed by the law with inherent suspicion, as it negatively compromises the integrity of judicial process.

The judge must, at all times, be a figure beyond all reasonable reproach, showing an absolute lack of interest in the subject matter as well as the result or outcome, the Court stressed.

"The trust and fidelity of common populace in the functioning of judicial institutions is the non-negotiable lifeblood of the justice delivery system, sine qua non for which is, that the adjudication/outcome is perceptibly free from even a shadow of prejudice/bias," Justice Goel commented

Trust of ordinary populace in the working of judicial institutions is the non-negotiable lifeblood of the justice delivery system Punjab and Haryana High Court .The Court added that while ruminating on a claim of bias or prejudice, a judge must assess not only his or her subjective capacity to remain uninfluenced but also critically gauge the objective perception of impartiality that his or her participation casts upon the proceedings.

"To fail this latter test, is to risk eroding the public confidence in the justice administration system, an outcome, far graver than a mere procedural error," the Court emphasized.

Moreover, the Bench stressed that when a higher court is called to evaluate a claim of bias against a ruling officer, such evaluation should be done with exacting and objective scrutiny.

While the protection of judicial impartiality is vital to the rule of law, judges, especially the judicial officers, must simultaneously be safeguarded against frivolous and factually unsupported imputations, the Court added.

"The High court must diligently ensure that a judicial officer is not compelled to succumb to duress from disgruntled litigants, deploying specious or calumnious accusations, as a means to manipulate the legal process or avoid an unfavorable outcome," the Court emphasized.

Any plea claiming bias must be substantiated by concrete and cogent material, going far beyond a mere expression of a litigant's unacceptability or unpalatability of a judicial decision, to prevent a fishing and roving inquiry in a presiding officer's motives, it added.

"If an inquiry is initiated on such frivolous accusations, it will well-nigh yield anarchy in the adjudicatory process," the Court warned.

The High court must carefully ensure that a judicial officer is not compelled to succumb to duress from disgruntled litigants Punjab and Haryana High Court Advocates Fateh Saini, Sangeeta Sharma, Harshdeep Kaur and Neetu Rana represented petitioner Akash Walia.

Additional Advocate General Tarun Aggarwal argued for the State of Haryana.

Advocates Abhinav Sood, Arshbir and Nitesh Jhanjaria appeared for accused Rishab Walia.