

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Misc. No. M-33042 of 2015
Date of decision: 01.10.2015**

Sonu alias Lefti

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Suresh K. Jindal, Advocate
for the petitioner.

Mr. Sharad Kumar Yadav, D.A.G., Haryana
for the respondent – State.

Daya Chaudhary, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. on behalf of the petitioner-Sonu alias Lefti for grant of regular bail in case FIR No.378 dated 20.04.2015 registered under Sections 148, 149, 323, 324, 506 of Indian Penal Code and Sections 326 and 34 IPC and Section 25 of the Arms Act, which were added later on, at Police Station Chandni Bagh, Panipat. Sections 148 and 149 IPC were deleted subsequently.

Learned counsel for the petitioner submits that the petitioner is a young boy of 19 years of age and he is a student. Initially, the petitioner was arrested and was released on regular bail

as recovery was also effected from him but subsequently, on addition of aforesaid offences, he was arrested. Learned counsel further submits that co-accused of the petitioner, namely, Ajay and Sombir have also been granted concession of regular bail by the lower Court. The petitioner is in custody since 21.07.2015. Learned counsel has also relied upon judgment of this Court in **Rakesh vs. State of Haryana, 2011 (2) RCR (Criminal) 436** in support of his contentions.

Learned State counsel opposes grant of regular bail to the petitioner on the ground keeping in view the seriousness of the offence and the fact that Section 326 IPC has been added. Learned State counsel also submits that the petitioner cannot claim parity with his co-accused.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the allegations levelled in the FIR and other documents on the file.

The question for consideration before this Court is as to whether the accused, who has been released on regular bail, shall have to seek fresh bail after addition of certain offences by the Investigating Agency. Similar issue was issue in Rakesh's case (supra) wherein judgment of Hon'ble the Apex Court in **Prahlad Singh Bhatti vs. NCT, Delhi and another, 2001(2) RCR (Criminal) 377** was relied.

The relevant portion of **Prahlad Singh Bhatti's case (supra)** is reproduced as under: -

“7. Powers of the Magistrate, while dealing with the applications for grant of bail, are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Sessions, Magistrate has no jurisdiction to grant bail unless the matter is covered by the provisos attached to Section 437 of the Code. The limitations circumscribing the jurisdiction of the Magistrate are evident and apparent. Assumption of jurisdiction to entertain the application is distinguishable from the exercise of the jurisdiction.

9. In the instant case while exercising the jurisdiction, apparently under Section 437 of the Code, the Metropolitan Magistrate appears to have completely ignored the basic principles governing the grant of bail. The Magistrate referred to certain facts and the provisions of law which were not, in any way, relevant for the purposes of deciding the application for bail in a case where accused was charged with an offence punishable with death or imprisonment for life. 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. Neither Section 437 (5) nor Section 439 (1) of the Code was attracted. There was no question of cancellation of bail earlier granted to

the accused for an offence punishable under Sections 498A, 306 and 406 IPC. The Magistrate committed a irregularity by holding that "I do not agree with the submission made by the Ld.Prosecutor in as much as if we go by his submissions then the accused would be liable for arrest every time the charge is altered or enhanced at any stage, which is certainly not the spirit of law". With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Instead of referring to the grounds which entitled the respondent-accused the grant of bail, the Magistrate adopted a wrong approach to confer him the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail."

In **Rakesh's case (supra)**, initially the FIR was registered under Sections 324, 506, 34 IPC and the petitioner was released on regular bail. Thereafter, during investigating, offences under Section 326 and 323 IPC were added and the petitioner was arrested. The petitioner moved second application for bail on addition of subsequent sections. Under those circumstances, the petitioner-accused in that case was released on bail by holding that accused is not required to seek fresh bail even after addition of certain sections during investigation.

The controversy in the present case is also similar to as that of **Rakesh's case (supra)** as Sections 326 and 323 IPC were

added subsequently. On addition of Section 326 IPC and without seeking cancellation of bail granted to the petitioner, the petitioner was re-arrested. Moreover, co-accused of the petitioner, namely, Ajay and Sombir have already been granted regular bail by the lower Court.

The petitioner is in custody for more than 2 months. The investigation has been completed as challan has already been filed on 22.07.2015. The case is triable by the Magistrate and trial is likely to take a long time. The petitioner is young person of 19 years of age. He is a student and not involved in any other criminal case earlier. The petitioner was initially arrested on 26.04.2015 and was released on bail by the learned Magistrate vide order dated 28.04.2015. The petitioner did not misuse concession of bail and did not violate any of the terms and conditions thereof. Without seeking cancellation of said bail and after addition of Section 326 IPC, the petitioner and his two co-accused were arrested by the Police on 21.07.2015. Thereafter, co-accused Sombir and Ajay have been granted bail by the learned Additional Sessions Judge, Panipat vide orders dated 10.08.2015 and 24.08.2015 respectively. Case of the petitioner is identical to the case of the said two co-accused. Version of the complainant that the petitioner called 4/5 persons on phone and they all assaulted him and Bhushan, was found false by the investigating agency and Sections 148 and 149 IPC have been deleted and challan has been filed only against the petitioner and two others. The complainant-injured Sultan has already been discharged from the hospital long back. Bail was

granted to the petitioner on 28.04.2015 by the learned Magistrate after considering all the facts. No new facts have become available to the investigating agency after re-arrest that may have the effect of aggravating the offence.

Accordingly, in view of ratio of judgment in **Rakesh's case (supra)**, the present petition is allowed and the petitioner (Sonu alias Lefti) is directed to be released on regular bail subject to furnishing bail/and surety bonds to the satisfaction of the trial Court/Duty Magistrate.

01.10.2015
neetu

(DAYA CHAUDHARY)
JUDGE