

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM No. M-34717 of 2014

Date of decision: 12.01.2015

Smt.Veena Aggarwal and another

.....Petitioners

versus

State of Punjab

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Hemant Saini, Advocate for the petitioners
Mr.Ashish Sanghi, DAG Punjab

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Reply filed. Impugned in the present petition is the order dated 29.9.2014, passed by Shri Rajvinder Singh, learned Chief Judicial Magistrate, Rupnagar, vide which, application of the prosecution under Section 437(5) Cr.P.C. was allowed and regular bail granted to the petitioners Smt.Veena Aggarwal and Sanjay Aggarwal in FIR No.94 dated 19.6.2013, registered under Section 406 IPC at Police Station City Rupnagar, was cancelled on the ground of concealment of material facts i.e. the direction issued by this Court to deposit half of the embezzled amount with the department, as is evident from the observations made by the High Court vide order dated 5.10.2013 passed in CRM No.M33716 of

2013.

I have heard learned counsel for the parties and have also gone through the file.

The learned Chief Judicial Magistrate, Rupnagar while cancelling the bail observed as under:-

“5. Thus, it is evident that by their own act and conduct by concealing true and material facts with regard to the undertaking given by accused themselves to deposit 50% of the embezzled amount of Rs.1,59,00,000/- they have mislead this Court that resulted in grant of regular bail to the accused. By their own misleading act, accused succeeded initially in getting interim bail from Hon'ble High Court. Thereafter, not only the accused but the investigating agency mislead this Court that resulted in non-recovery of huge embezzled amount. Now the material question that arises for consideration before this Court is whether in case the accused may not have taken false plea before Hon'ble High Court whether they would have been granted interim bail? Surely no as is evident from final order passed by Hon'ble High Court vide order dated 11.11.2013. Further, by concealment of these material facts only on the pretext of having joined investigation, they succeeded in getting bail from this Court. Whereas, till date no recovery has been effected. The fact regarding mortgage of land and filing of affidavit was also in existence at the time of disposal of application before Hon'ble High Court. It is not subsequent act.”

Further it comes out that the petitioners have approached this Court in CRM M 33716 of 2013 (Annexure P2), in which, this Court, while granting interim relief on 5.10.2013 passed the following order:-

“Learned counsel, inter alia, contended that the petitioners are prepared to deposit the 50% of the

embezzled amount, within this month (October) and the remaining amount in installments with the concerned department.

Heard.

Notice of motion be issued to the respondent, returnable for 11.11.2013.

In case, the petitioners deposit the half of the impugned embezzled amount with the concerned department only, then they would be released on interim bail on their furnishing adequate bail and surety bonds in the sum of ₹ 25,000/- each to the satisfaction of Arresting Officer.”

However, it comes out that the conditions were not complied with and the anticipatory bail was dismissed vide order dated 11.11.2013 (Annexure P3). Failure of the petitioners to comply with the conditions was one of the grounds. It was observed as under:-

“7. At this stage, on instructions from the investigating officer, learned State Counsel and counsel for the complainant have stated that the petitioners have neither deposited 50% of the embezzled amount nor joined the investigation in compliance with the order of this Court. That means, the petitioners have obtained interim bail on false plea/ground of payment of 50% of the embezzled amount, but they have not complied with the directions in this relevant connection and are not entitled to the concession of pre-arrest bail.”

While concluding the order, this Court also observed as under:-

“Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits of the main

case, as the same has been so recorded for a limited purpose of deciding the present petition for anticipatory bail.”

Therefore, it is clear that the observations made in the said order dated 11.11.2013, in which, the order dated 5.10.2013 has merged, were meant only for the limited purpose of deciding the said anticipatory bail and the parameters for deciding the regular bail are entirely different. At that time, the accused were in custody and no longer required for further investigation. The order in anticipatory bail could not be taken into consideration while cancelling the bail. Learned Chief Judicial Magistrate, Rupnagar, has failed to appreciate the impact of the order passed in anticipatory bail application. The impugned order has been passed in a casual manner without proper appreciation of the facts and background of the case. Once the bail has been granted, there has to be strong grounds for cancelling the same on the ground that it is being mis-used. There are no allegations in the application of the prosecution that the concession of the bail is being mis-used by the accused. In this way, the impugned order dated 29.9.2014 passed by learned Chief Judicial Magistrate, Rupnagar is patently illegal and cannot be sustained in the eyes of law. Accordingly the same is set aside and the present petition is allowed.

12.01.2015
gk

(Kuldip Singh)
Judge