

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

**Criminal Misc. No. M- 37585 of 2015 (O&M)
Date of Decision: 8.12.2015**

Parminder Pal Walia

--Petitioner.

Vs.

State of Haryana

--Respondent.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Rajat Mor, Advocate
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

- 1. To be referred to the Reporters or not?**
- 2. Whether the judgment should be reported in the Digest?**

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioner, by way of present petition under Section 482 read with Section 437 (6) of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the impugned order dated 1.10.2015 (Annexure P-3) passed by the learned Sessions Judge, Panchkula, whereby order dated 15.9.2015 (Annexure P-2) passed by the learned Judicial Magistrate 1st Class, Kalka, was upheld dismissing revision filed by the petitioner and he was denied the concession of bail under Section 437 (6) Cr.P.C.

Notice of motion was issued and pursuant thereto, initially reply by way of affidavit dated 26.11.2015 was filed on behalf of the respondent-State to the effect that it was only a proforma party.

Thereafter, vide order dated 28.11.2015 passed by this Court, respondent-State was directed to file a better affidavit, which has been filed today in the Court and copy thereof has been supplied to the learned counsel for the petitioner.

Learned counsel for the petitioner submits that petitioner has got a statutory right of bail under Section 437 (6) Cr.P.C. but the same has been declined by the learned courts below, while passing misconceived orders and the same have resulted in serious miscarriage of justice. He further submits that there was no delay attributable to the petitioner. Petitioner is inside the jail for the last more than two years. The offence was triable by Magistrate. Charge in the present case was framed as far back as on 10.2.2014 and prosecution evidence has not been concluded so far, whereas prosecution was under legal obligation to conclude its evidence within 60 days after framing of charge. He concluded by submitting that learned courts below have failed to assign any reason much less cogent reasons, while declining the concession of bail to the petitioner.

In support of his contentions, learned counsel for the petitioner places reliance on the following orders passed by this Court:-

1. Smt. Kamlesh Vs. State of Haryana (CRM-M-24090 of 2009 decided on 15.10.2009)
2. Rajinder Kumar Sharma Vs. State of Punjab (CRM-M-25363 of 2014 decided on 27.8.2014)
3. Tarsem Lal Singla Vs. U.T. Chandigarh (CRM-M-22965-2014 decided 28.8.2014)

4. Harpreet Kaur Vs. State of Punjab (CRM-M-12135 of 2014 decided on 2.9.2014)

5. Ram Lal Vs. State of Punjab (CRM-M-14978 of 2015 decided on 17.7.2015)

6. Narender Pal Vs. State of Haryana (CRM-M-22657 of 2015 decided on 22.7.2015)

He prays for setting aside the impugned orders, by allowing the present petition.

On the other hand, learned counsel for the State, on instructions from SI Paramjit Singh, submits that learned courts below have not exceeded their jurisdiction, while passing the impugned orders and the same deserve to be upheld. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation, the impugned orders passed by the learned courts below have been found to be patently illegal and the same are liable to be set aside. To say so, reasons are more than one, which are being recorded hereinafter.

It is not in dispute that offences alleged against the petitioner are triable by Magistrate. Charges against the petitioner were framed as far back as on 10.2.2014. It is also not in dispute that prosecution evidence is still going on. Under these circumstances, the sole question that arises for consideration of this Court is, whether the petitioner would become entitled in law for bail

pending trial, in view of the provisions contained in Section 437 (6) Cr.P.C.

Section 437 (6) Cr.P.C., reads as under:-

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“(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.”

A combined reading of the impugned orders would show that no reason much less cogent reasons have been assigned, by the learned courts, while declining the concession of bail to the petitioner, as required under the provisions of Section 437 (6) Cr.P.C. So far as the alleged severity of punishment in the case of conviction, as observed by the learned JMJC in the operative part of the impugned order, is concerned, learned counsel for the petitioner has pointed out that the complainant has filed a suit for specific performance. Learned counsel for the State also could not point out any serious offence which might have been committed by the petitioner. Having said that, this Court feels no hesitation to conclude that learned courts below have proceeded on a wholly misconceived and perverse approach, while passing the impugned orders declining the concession of bail to the petitioner.

It is also not in dispute that the petitioner is inside the

custody for the last more than two years. In this view of the matter, no fault can be found with the petitioner, so far as delay in trial is concerned. Admittedly, the statutory period of 60 days has already expired long back and the prosecution evidence is still going on. In such a situation, provisions of law contained in Section 437 (6) Cr.P.C. would certainly come to the rescue of the petitioner.

The abovesaid view taken by this Court also finds support from the abovesaid numerous orders passed by this Court, as relied upon by the learned counsel for the petitioner.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned orders passed by the learned courts below are liable to be set aside and the present petition deserves to be allowed.

Consequently, order dated 1.10.2015 (Annexure P-3) passed by the learned Sessions Judge, Panchkula, as well as order dated 15.9.2015 (Annexure P-2) passed by the learned Judicial Magistrate 1st Class, Kalka, are hereby set aside. Petitioner is directed to be released on bail pending trial subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of learned trial court.

Resultantly, with the abovesaid observations made and directions issued, present petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

8.12.2015
AK Sharma