

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

CRM-M-40091-2015

Date of decision: 03.12.2015

Sarabjit Singh @ Sabba

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. Daljit Singh Virk, AAG, Punjab.

RAMESHWAR SINGH MALIK, J. (ORAL)

Petitioner seeks bail pending trial in FIR No.48 dated 16.04.2015 under Sections 22, 61, 85 of NDPS Act, registered at Police Station Goraya, District Jalandhar.

Learned counsel for the petitioner refers to the order dated 17.10.2015 (Annexure P-2) passed by the learned Special Judge, whereby the petitioner was granted the concession of default bail under Section 167 (2) Cr.P.C. Since his application for bail under Section 439 Cr.P.C. was pending before the same Court, which has been rendered infructuous by passing of the abovesaid order dated 17.10.2015 (Annexure P-2), said bail application was dismissed as withdrawn vide order dated 23.10.2015 (Annexure P-3). He further submits that since number of FIR in the order dated 17.10.2015 was incorrectly mentioned as 148 instead of 48, petitioner again surrendered before the learned trial Court on 26.10.2015 and

thereafter, the order dated 30.10.2015 (Annexure P-4) was passed, again granting the benefit of bail to the petitioner. Learned counsel for the petitioner also submits that the learned Special Judge, Jalandhar exceeded his jurisdiction, while passing the order dated 2.11.2015, whereby the bail granted to the petitioner vide abovesaid order dated 30.10.2015 was cancelled, that too without having been moved any application on behalf of the prosecution or issuing any show cause notice to the petitioner. Learned counsel for the petitioner would next contend that since the order dated 02.11.2015 amounts to review the order dated 30.10.2015, the same is without jurisdiction and liable to be set aside. He prays for allowing the present petition.

On the other hand, learned counsel for the State, on instructions from HC Lawinder Singh, Police Station Goraya, Jalandhar, submits that learned Special Court committed no error of law, while passing the impugned order because the petitioner was granted the benefit of default bail proceeding on a factually incorrect presumption treating it to be a case of non-commercial quantity, whereas the case was that of commercial quantity. 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 contentions raised, this Court is of the considered opinion that the order dated 02.11.2015 passed by the learned Special Judge would amount to reviewing the earlier order dated 30.10.2015 and the same cannot be sustained.

In view of the above and without commenting anything further

on merits at this stage, lest it should prejudice the rights of either of the parties, instant petition is allowed. Petitioner is directed to be released on bail pending trial on his furnishing adequate bail bonds/surety bonds to the satisfaction of learned trial Court.

Disposed of, accordingly.

[RAMESHWAR SINGH MALIK]
JUDGE

03.12.2015
vishnu