

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

**Crl. Misc. No.M-40383 of 2014
Date of decision : 10.09.2015**

Subhash Chander

.....Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

- 1.Whether Reporters of local papers may be allowed to see the judgment?
- 2.To be referred to the Reporters or not? Yes
- 3.Whether the judgment should be reported in the digest? Yes

**Present: Mr. Deepinder Singh, Advocate
for the petitioner.**

Mr. G.S. Salwara, DAG, Haryana.

**Mr. Naveen S. Bhardwaj, Advocate
for respondent no.2.**

ANITA CHAUDHRY, J.

The instant petition has been filed under Section 482 Cr.P.C. read with Section 439(2) Cr.P.C. for cancelling the bail allowed to respondent no.2 on 05.11.2014 by the Additional Sessions Judge, Gurgaon.

The complainant alleges that regular bail applications of the petitioner had been dismissed by the High Court and also the Hon'ble Apex Court but the trial Court at the stage of recording evidence allowed bail to respondent no.2 without there being any application by the accused.

At the first blush, the impugned order did not appear to be egregious but as the facts unfold, it throws up interesting facts.

A case under Sections 147, 148, 149, 307, 323 IPC was registered at Police Station Bilaspur, District Gurgaon on 28.03.2012. The police investigated the matter, arrested the accused and filed challan against the accused in June, 2012. The case was thereafter, committed. Charge was framed. The prosecution had examined 19 witnesses up to 12.09.2014.

Petitioner claims that though the incident was of March, 2012 but there was no counter complaint at the behest of respondent no.2 but on account of his connections, he created a false defence and moved complaints to various authorities after delay of one and a half year. The matter had earlier been thoroughly inquired by the Commissioner of Police, Gurgaon, Deputy Commissioner of Police, Gurgaon South and the Assistant Commissioner of Police, Manesar, Gurgaon. Challan was submitted and trial had commenced.

Respondent no.2 approached the Lokayukta, Haryana with an application (Annexure P-10) who ordered an inquiry and DIG Crime Branch, Gurgaon submitted a report on 14.07.2014 (Annexure P-11) without involving the complainant. Thereafter, the police at the fag end of the trial moved an application seeking discharge of respondent no.2. The Additional Sessions Judge, Gurgaon passed the following order on 05.11.2014:-

“Reply to discharge application filed. Since, there is an application for discharge of accused Satish, the disposal of which will take long time and accused is in custody since

28.03.2012 and co-accused are already on bail on furnishing personal bond in the sum of Rs. 75,000/- with one surety in the like amount to the satisfaction of this Court. There is also no stay of proceedings of discharging the accused-applicant. Requisite bonds furnished, accepted and attested. Accused Satish be released forthwith if not wanted in any other case.

No PW is present. Summons issued to Dr. Saleem Ahmed, received back unserved with the report that he was not available at the given address and when contacted on mobile, he disclosed that he is out of country. Summons of PW Dr. Kulbir Ahlawat received back for want of complete particulars of the record to be produced in the Court Ahlmad is directed to mention the complete particulars of the record in the summons of PW Dr. Kulbir Ahlawat which is to be produced by him in the Court on the next date of hearing. Summons of PW Dr. Lalit Kumar received back unserved with the report that he was tried to be contacted on mobile but he did not receive the same and his complete address is not mentioned in the summons. PWs HC Subhash Chander and EHC Vijay Singh not appeared today despite service of summons. Now, they be summoned throughailable warrants in the sum of Rs. 5,000/- with one surety in the like amount each for 28.11.2014. The above named three doctors be also again summoned through special messenger for the said date on their new address. All remaining unexamined PWs be summoned through Special Messenger for 29.11.2014. Special efforts be made as this case pertains to the year 2012 and is in the list of action plan cases for the year 2014-15 and is to be disposed of on priority basis.”

The petitioner challenges the order dated 05.11.2014 vide which bail has been allowed to respondent no.2.

Notice of the petition was sent to the respondents and they have appeared. Both the respondents have filed their reply.

Respondent no.1-State has opposed the petition on the plea that the petition was not maintainable. It was pleaded that respondent no.2 had approached the Lokayukta, Haryana who directed the DGP, Haryana to look into the matter and inquiry was conducted by DIG, Crime Branch, Gurgaon and it was found that the petitioner was not involved in the brawl and they had ordered departmental action against the police officers. It was also mentioned that FIR No.421 was registered on 30.09.2014 under Section 323, 506, 447, 147, 148, 150 IPC on a complaint made by respondent no.2. It was pleaded that regular bail had been granted by Additional Sessions Judge, Gurgaon after giving thoughtful consideration to the facts and circumstances. It was pleaded that reinvestigation in the matter was conducted pursuant to the directions of Lokayukta, Haryana.

Respondent no.2 though was served in January, 2015 but filed the reply only in April, 2015. Plea was taken that there was no bar and a person could file number of applications seeking regular bail even though his bail plea had been rejected by the Apex Court. It was pleaded that the Court had granted regular bail to the petitioner taking into consideration the totality of the circumstances. It was pleaded that the police has the powers to further investigate into the matter without seeking permission of the Court which were conferred on it under Section 173(8) Cr.P.C.

Learned counsel for the petitioner-complainant urges that bail could not be given to respondent no.2/accused. He refers to order Annexure P-12 vide which the bail application of the respondent

no.2 had been dismissed on 09.10.2013. He also referred to order (Annexure P-13) passed on the 7th bail petition in CRM-M-30562-2014. Counsel contends that the Hon'ble Apex Court in ***Bimla Devi Vs. State of Bihar 1994(1) RCR (Crl.) 509*** had made a strong observation against the Judicial Magistrate who had acted contrary to the settled principles of judicial discipline and propriety. It was urged that after the challan has been filed and 19 witnesses have been examined, no inquiry could have been ordered and there could be no reinvestigation into the matter as reinvestigation is forbidden in law. Referring to ***Virender Prasad Singh Vs. Rajesh Bhardwaj & Ors. 2010 CriLJ 4275***, the counsel urged that in a petition filed under Section 482 Cr.P.C., the father of the accused had approached the High Court and the High Court had directed the DGP for his opinion and for decision as to whether the earlier investigation was properly done and the Hon'ble Apex Court held that the course adopted was not acceptable and the High Court could not seek the opinion of the DGP and it also commented on the petitioner who had approached the High Court when the matter was pending and cognizance had been taken by the Magistrate on the basis of charge-sheet.

The State counsel as well as the counsel appearing for respondent no.2 had urged that the application for cancellation of bail was not maintainable in the High Court and the application should have been moved before the Court which had allowed bail. The counsel appearing for respondent no.2 had urged that the Court could not have authorised the detention of respondent no.2 any further since the discharge application had been filed and the petition

should be dismissed as it was not maintainable. Reliance was placed upon *Aslam Babalal Desai Vs. State of Maharashtra 1993(1) RCR (Criminal) 600*, *The State through the Delhi Administration Vs. Sajay Gandhi 1978 AIR (SC) 961* and *Simranjit Singh Mann Vs. State of Bihar 1987 AIR (SC) 149*.

In *Brij Nandan Jaiswal Vs. Munna @ Munna Jaiswal 2009(1) RCR (Crl.) 529 (S.C.)*, it was observed by the Hon'ble Supreme Court that the complainant can always question an order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any Court, the only way to get it cancelled is on account of its mis-use.

The bail order can be tested on merits also. The trial Court has granted bail to the petitioner without considering the pros and cons of the matter. The petitioner had approached the High Court seven times seeking regular bail but each time his plea was rejected.

The petitioner had placed on record two orders Annexure P-12 and Annexure P-13. The details of the petitions filed earlier are referred in para No.13 of the petition. Respondent No.2 had listed the details of his petitions seeking bail in para no.18 of the CRM-M-30562-2014. It is apposite to refer to the order passed on 12.09.2014 in CRM-M-30562-2014. It reads :-

"This is seventh bail application. The earlier bail application has been dismissed on merit. The petitioner has also approached the Hon'ble Apex Court but remained unsuccessful. So, no ground for grant of concession of bail is

made out.

Learned counsel for the petitioner has relied upon the inquiry report of DGP (Crime Branch). However, that report is not binding on the Court as the inquiry has not been made by taking permission from the Court.

Consequently, the petition stands dismissed.”

The record reveals that respondent no.2 approached the Lokayukta, Haryana seeking inquiry in the case and he levelled allegations against the SHO. The Registrar of the Lokayukta Office, Haryana vide Annexure P-10 passed the order on 19.02.2014. The concluding part of the order reads as under:-

“In such circumstances, it is desirable that the matter be inquired into by the Superintendent of Police, Crime Branch, Gurgaon. As such copy of complaint alongwith inquiry report and the copy of objections referred above be sent to the Director General of Police, Crime Branch, Haryana, Panchkula so as to desire the Superintendent of Police, Crime Branch, posted at Gurgaon to inquire into the allegations of the complainant who is confined in jail at Bhondsi. He be also desired to complete the inquiry as early as possible and preferable within 60 days.

After filing of report the matter shall be heard on
15th July, 2014 at 10:30 A.M.”

In response to the complaint No.494/2013, a report (Annexure P-11) was prepared by DIG, Crime Branch, Gurgaon which was sent to Director General of Police, Crime. Thereafter, the State moved an application seeking discharge of the accused.

In ***Ramchandran Vs. R. Udhayakumar, 2008(3) R.C.R. (Criminal) 47***, the Hon'ble Supreme Court had observed :-

“At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section(2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation.”

In ***Mithabhai Pashabhai Patel & Anr. Vs. State of Gujarat, 2010(1) RCR (Crl.) 171***, the Hon'ble Supreme Court had observed:-

“It is beyond any cavil that 'further investigation' and 'reinvestigation' stand on different footing. It may be that in a given situation a superior Court in exercise of its Constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a “State” to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior Court would ordinarily issue such a direction.”

The trial Court without examining the fact whether the police had any further right of re-investigatioin and whether it was permitted under law, allowed bail to the petitioner. I do not see why such an order was passed when charge had been framed and 19 witnesses have been examined. Orders like this, shake faith in the

system. It is a disturbing feature that the Additional Sessions Judge not only acted contrary to the settled principles of judicial discipline and propriety. The question would also arise whether the Lokayukta, Haryana could seek re-investigation when the trial was before the Court? At this stage we refrain from commenting on the credibility or otherwise of the material collected by the Enquiry Officer post filing of challan as it is the function of the trial Court.

In these circumstances, the impugned order (Annexure P-1) dated 05.11.2014 granting bail to respondent no.2 deserves to be quashed.

Respondent no.2 would surrender before the trial Court on 14.09.2015. In case he fails to do so, direction needs to be given to the police to take the accused in custody.

The petition is disposed of.

10.09.2015

sunil

(ANITA CHAUDHRY)
JUDGE