

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

CRR No.1466 of 2015.

Date of Decision: May 27, 2015.

State of Haryana

....Petitioner.

VERSUS

Bajrang and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Deepak Sabharwal, Addl. Advocate General, Haryana and
Ms. Mahima, Assistant Advocate General, Haryana
for the petitioner-State.

Mr. K.D.S. Hooda, Advocate for the respondents.

SNEH PRASHAR, J.

This was a revision petition directed against the Order dated 18.04.2015 passed by learned Additional Sessions Judge, Hisar, whereby the respondents were allowed to be released on bail on furnishing personal bonds in the amount as mentioned in the order dated 13.03.2015.

2. The backdrop of the matter is that in case bearing First Information Report No.428 dated 18.11.2014 the police presented a charge sheet alleging commission of offence under Section 147/149/188 of the Indian Penal Code (for short, "I.P.C."), against 799 persons. On an

application filed by the accused-respondents, learned Additional Sessions Judge, Hisar, vide order dated 13.03.2015 granted the concession of bail to them and directed their release on bail on their furnishing bonds in the sum of Rs.1 lac with one sound surety in the like amount each to the satisfaction of the said Court.

Subsequently, the respondents moved an application invoking the provisions of Section 436(1) of the Code of Criminal Procedure (for short, "Cr.P.C.") for their release on bail on furnishing personal bonds. The learned Additional Sessions Judge, Hisar, vide order dated 18.04.2015, allowed their application and held them entitled to be released on bail on furnishing personal bonds in the amount as mentioned in the bail order dated 13.03.2015.

3. Aggrieved by the order dated 18.04.2015, the State of Haryana filed the instant revision petition.

4. The submissions made by Mr. Deepak Sabharwal, learned Additional Advocate General, representing the petitioner-State of Haryana and Mr. K.D.S. Hooda, learned counsel representing the respondents have been heard.

5. Learned counsel for the petitioner argued that at the time of decision of the application for bail filed by the respondents, they were duly represented by lawyers and it was not their plea that they were 'indigent persons'. It was not so said by them even in the subsequent application filed by them under Section 436(1) Cr.P.C. The respondents belong to different States and the allegation against them is of waging war against the State. In

case they are released on personal bonds, they would never thereafter attend the court proceedings. Learned State counsel further argued with vehemence that only once the discretion given under proviso to Section 436(1) Cr.P.C. could be exercised by the Court. After the order is passed, the Court cannot then review or make any kind of change in the same. To support his arguments, learned State counsel relied upon ***Hari Singh Mann vs. Harbhajan Singh Bajwa, (2001) 1 S.C.C. 169; Adalat Prasad vs. Rooplal Jindal and others, (2004) 7 S.C.C. 338; and Abdul Basit @ Raju and others vs. Md. Abdul Kadir Chaudhary and another, 2014(4) R.C.R. (Criminal) 716.***

6. Learned counsel for the respondents controverted the arguments of learned State counsel and rightly so as, in my considered opinion the order dated 18.04.2015 passed by learned Additional Sessions Judge, Hisar suffers from no irregularity or perversity.

The right to claim bail in a bailable offence is an absolute and indefeasible right. In a bailable offence, there is no question of discretion in granting bail. In the instant case, the respondents were arrested on 18.11.2014. Admittedly, when they were produced before the Magistrate, the police did not present to the court that they were accused of commission of bailable offences because of which no order granting them bail was passed by the Magistrate. The respondents remained in custody and it is only when the final report/ challan as envisaged under Section 173 Cr.P.C. was submitted in the Court that it was presented that 799 persons out of about 942 persons were accused of commission of offence under Sections

147/149/188 I.P.C. which were all bailable offences. Surprisingly, even on the date, the final report was filed by the police, no order extending the concession of bail to the respondents was passed by the Court although the charge sheet filed against them was of bailable offences. Ultimately, the respondents of their own filed an application for bail on 11.03.2015. The order dated 13.03.2015 reveals that notice of the application was issued to the State and the counsel representing the State insisted for passing an order directing the respondents to furnish sound local sureties. However, learned Additional Sessions Judge, allowing the respondents to be released on bail, directed them to furnish bail bond in the sum of Rs.1 lac with one sound surety in the like amount each.

7. It was only when the respondents were unable to submit surety bonds that another application under Section 436(1) Cr.P.C. was filed by them on which, as postulated in the Explanation to the proviso to section 436(1) Cr.P.C., the respondents were allowed to be released on furnishing personal bonds vide the impugned order dated 18.04.2015. Before going into the contentious issue, it shall be expedient to reproduce hereunder Section 436 Cr.P.C.:-

“436. In what cases bail to be taken.—(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, [may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail] from such person,

discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

[Explanation.—Where as person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso.]

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 or section 446A.

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.”

8. It is crystal clear from the above provision that when any person other than a person accused of a non bailable offence is arrested and brought before a Court, it is mandatory for the Court to release that person on bail. The court if it thinks fit may (has the discretion), but in case it finds that such person is an 'indigent person' and is unable to furnish surety shall (its mandatory), instead of taking bail from such person release him on his executing a bond without sureties for his appearance as provided. The Explanation to the proviso to section 436(1) Cr.P.C. relates to the stage when the Court finds that the person is unable to give bail within a week of the date of his arrest that it shall be a sufficient ground for the court to presume that he is an 'indigent person' for the purpose of proviso to section 436(1) Cr.P.C.

9. Reverting to the instant case as observed above, the order

granting bail to the respondents was not passed by the court because it was not presented before the court when they were produced for the first time that they were accused of bailable offences. For that reason the presumption that the respondents were 'indigent persons' as they had failed to give bail 'within a week of their arrest' could also not be invoked as postulated in the Explanation to the proviso to section 436(1) Cr.P.C. The order granting bail was passed on the application filed by the respondents who were accused of bailable offences. Subsequently raising the presumption that the respondents were 'indigent persons' that the order dated 18.04.2015 was passed.

10. In the above premises, the question is whether applying the provisions of Explanation to the proviso to section 436(1) Cr.P.C. vide the impugned order dated 18.04.2015 will amount to review or alteration of the order dated 13.03.2015 which is barred under Section 362 Cr.P.C.

Indeed, as held by Hon'ble Apex court in **Abdul Basit @ Raju and others' case (supra)**, Section 362 Cr.P.C. mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an arithmetical error. In the said case, the matter was that the High Court had cancelled the bail granted to the accused-petitioners under the provisions of Section 167(2)(a) (i) of Cr.P.C. It was in the said circumstances that finding the High Court not justified in reviewing its earlier order of grant of bail that the Hon'ble Apex Court held that the High Court has assigned an erroneous interpretation to the well settled position of law, assumed expanded

jurisdiction onto itself and passed an order in contravention of Section 362 Cr.P.C. cancelling the bail granted to the petitioners.

11. However, the matter in hand is totally distinguishable. It was not the case that the relief of bail declined/granted to the respondents had been allowed/cancelled by learned Additional Sessions Judge vide the impugned order dated 18.04.2015. The concession of allowing bail to the respondents on their furnishing personal bond in the sum of Rs.1,00,000/- with one surety in the like amount was allowed by learned Additional Sessions Judge by passing order dated 13.03.2015. Since the respondents were unable to give bail after the passing of the order that finding it a sufficient ground to presume that the respondents were 'indigent persons' for the purposes of proviso to Section 436(1) Cr.P.C. as is provided in the Explanation to the proviso to Section 436(1) Cr.P.C. that vide the impugned order dated 18.04.2015 the learned Additional Sessions Judge allowed them to be released on bail on their furnishing personal bonds in the amount as mentioned in the order dated 13.03.2015. That neither amounted to review of the order dated 13.03.2015 nor amounted to making any alternation or change in the same.

Thus, finding no error, illegality or perversity in the order dated 18.04.2015 and the petition filed by the State being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

May 27, 2015
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