

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-10132 of 2016

Date of Decision: May 20, 2016

Rakesh Jain

.....Petitioner

Vs.

State of Chandigarh Administration and anr.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Sukant Gupta, Addl.PP for UT Chandigarh.

Mr. S.P.S. Sidhu, Advocate for respondent No.2.

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M.M.S. BEDI, J.

The petitioner is a complainant in FIR No. 13 dated January 12, 2015 registered at Police Station Sector 17, Chandigarh for offence punishable under Sections 420, 120 B IPC pending in the Court of CJM, Chandigarh.

Through instant petition under Section 439 (2) Cr.P.C. read with Section 482 Cr.P.C. cancellation of bail of accused- respondent No.2 granted vide order dated October 28, 2015, annexure P-14 as well as setting

aside the order dated January 29, 2016 whereby the revision petition filed by the petitioner has been dismissed by the Sessions Judge, Chandigarh, has been prayed for.

BRIEF FACTS:

An FIR was registered at the instance of the petitioner alleging that on January 2013, respondent No.2 Manjinder Singh Sodhi, Arunjot Singh Sodhi and Hem Raj Thakur represented to the complainant that Jagjit Singh had already entered into an agreement of sale with owner of the land, namely, Jagtar Singh and they could get the land sold for a price of Rs.4 crores within one year. Allured with the proposal of respondent No.2 and others the petitioner agreed to execute the agreement and made payment of Rs.1.15 crores by way of 6 cheques and Rs.35 lacs in cash to the accused but later on petitioner/ complainant came to know that Jagtar Singh had not entered into any agreement of sale with Jagjit Singh and in fact Arunjot Singh Sodhi had entered into an agreement of sale with Jagtar Singh after paying Rs.40 lacs given by the complainant in terms of the agreement of sale dated January 26, 2013. The complainant came to learn that Jagtar Singh was not the owner of one acre of land as was projected as such the earnest money was fraudulently received. In nut-shell the allegation against respondent No.2 was that he in connivance with his son Arunjot Singh Sodhi and others had duped the petitioner to the tune of Rs.1.50 crores.

Respondent No.2 made an attempt to seek pre-arrest bail in the Court of Additional Sessions Judge, Chandigarh but it was dismissed on

February 20, 2015. Respondent No.2 along with others approached High Court by way of CRM M-7322 of 2015 wherein the High Court had imposed a condition upon respondent No.2 and others that they were to deposit an amount of Rs.1.25 crores in the Registry within four weeks and it is only thereafter that their petition for anticipatory bail could be considered vide order dated March 20, 2015. Respondent No.2 and others challenged the interim order dated March 20, 2015 passed by the High Court before the Hon'ble Supreme Court. In the SLPs, notice was issued to the petitioner-complainant as he had been impleaded as respondent. A statement was made before Supreme Court on April 20, 2015 that possession of the land will be given to the petitioner and sale deed will also be executed in his favour on existing terms on the agreement of sale. The SLPs were dismissed by the Apex Court by passing the following order:-

“Date: 31.08.2015: These petitions were called on for hearing today.

CORAM: HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE S.A. BOBDE.

For Petitioner (s): Mr. Sidharth Luthra, Sr. Adv.
Mr. R.Anand Padmanabhan, Adv.
Mr. Anand Sharma, Adv.
Mr. Shashi Bhushan Kumar, Adv.

For Respondent (s): Mr. Ravi Kant, Adv.
Mr.Chandra Prakash, Adv.

Mr. Ramesh Babu M.R. Adv.

Mr.Mohan Jain, Sr. Adv.
Mr. Deepak Jain, Adv.
Mr. Dinesh Kumar Thakur, Adv.

Mr. A. Sumathi, AOR.

Upon hearing the counsel the Court made the following

O R D E R

The special leave petitions are dismissed. However, the anticipatory bail granted to the petitioner is confirmed subject to deposit of an amount of Rs.60 lakhs with the trial Court. The amount be kept in the fixed deposit.”

The implication of order dated August 31, 2015 passed by the Supreme Court was that the amount of Rs.1.25 crores imposed by the High Court had been reduced to Rs.60 lacs by the Apex Court. It appears that respondent No.2 did not have any intention to comply with the directions of the Apex Court as such counsel for respondent No.2 suffered a statement that his petition had become infructuous before this Court and the following order was passed on September 15, 2015 in CRM M-7322 of 2015:-

“CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Bipan Ghai, Senior Advocate with
Mr. Paras Talwar, Advocate
for the petitioners.

Mr. Sukant Gupta,
Addl. P.P. for the respondent.

Mr. P.S.Ahluwalia, Advocate
for the complainant.

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioners seeks pre-arrest bail in FIR No. 13 dated 12.1.2015 under Sections 420/120-B IPC registered at Police Station Sector 17, Chandigarh.

Learned senior counsel for the petitioners, at the very outset, fairly states that in view of the order dated 31.8.2015 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 3073 of 2015 and other identical SLPs (Crl), present petition has been rendered infructuous and may be disposed of, as such.

Ordered accordingly.

15.9.2015 Sd/-Rameshwar Singh Malik, Judge”

After having suffered a statement before this Court, the matter became infructuous as respondent No.2 has accepted to comply with the terms issued by the Apex Court. Respondent No.2 along with others again approached the Apex Court for correction of the order whereby the subsequent lines of the order which indicated that the prayer of anticipatory bail was allowed subject to payment of Rs.60 lacs were deleted. The order of the Apex Court dated October 12, 2015 is as follows:-

“Date: 12.10.2015: This application was called on for hearing today.

CORAM: HON’BLE MR. JUSTICE MADAN B. LOKUR
HON’BLE MR. JUSTICE S.A. BOBDE.

For Petitioner (s): Mr. R.Anand Padmanabhan, Adv.

Mr. Anand Sharma, Adv.
Mr. Shashi Bhushan Kumar, AOR.

For Respondent (s): Mr.Chandra Prakash, AOR.
Mr. Ravi Kant, Adv.
Mr. Mayantr Manish, Adv.

Mr.Ramesh Babu M.R., AOR
Upon hearing the counsel the Court made the following

O R D E R

The order dated 31.8.2015 is corrected to the effect that the special leave petitions are dismissed. The sentences thereafter will stand deleted since there was no such prayer in the petition.

Application is accordingly disposed of.”

Respondent No.2 again filed another petition before the High Court for the second time for grant of anticipatory bail vide CRM M-36523 of 2015 which was dismissed on October 21, 2015 by passing the following order:-

“CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.S.P.S.Sidhu, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral) Learned counsel for the petitioner, at the very outset, fairly states that keeping in view the totality of facts and circumstances of the case, he does not intend to press this second bail petition under Section 438 Cr.P.C. any further. He further submits that petitioner will surrender before the learned court of competent

jurisdiction within a period of one week from today and learned trial Court may be directed to consider the bail application of the petitioner, on the basis of peculiar facts and circumstances of the case, brought to its notice, at the instance of the petitioner, by passing an appropriate order, at an early date.

Having heard the learned counsel for the petitioner and without expressing any opinion on the merits of the case, lest it should prejudice the rights of either of the parties, petitioner is directed to surrender before the learned trial Court within a period of one week from today. After the petitioner surrenders, the learned trial Court shall consider his bail application, dispassionately and on the basis of all the peculiar facts and circumstances of the case, brought to its notice, at the instance of the petitioner, by passing an appropriate order, strictly in accordance with law but as early as possible.

Disposed of, accordingly.

21.10.2015

Sd/-Rameshwar Singh Malik, Judge.”

All the above said orders passed by the High Court and the Apex Court indicate that the petition for grant of pre-arrest bail of respondent No.2 stood dismissed. Respondent No.2, thereafter opted to surrender before the Court of CJM, Chandigarh. He surrendered on October 28, 2015. The CJM, Chandigarh passed the following orders before lunch hours:-

“Present:- Shri Hukam Singh, APP for the State.
Accused Manjinder Singh in person with
Sh. SPS Bhullar, Advocate.

File taken up today as an application for
surrender and bail of accused Manjinder Singh moved.
Accused Manjinder Singh taken into custody and notice
to the prosecution to file reply be given after sometime.
Till then, the accused Manjinder Singh in custody be
seated in the Court.”

A detailed reply running in 25 pages was filed by the State after
lunch time, copy of which has been placed on record as annexure P-17. It
was specifically mentioned by the investigating officer that respondent No.2
having not deposited Rs.60 lacs in the trial Court pursuant to the orders of
the Supreme Court was not entitled to the concession of bail. Learned CJM,
Chandigarh in his wisdom granted regular bail to respondent No.2 by
passing the following order:-

“Present:- Shri Hukam Singh, APP for the State.
Accused Manjinder Singh in person with
Sh. SPS Bhullar, Advocate.

File taken up again as reply to the bail application
has been filed. Bail application mentions that the
accused Manjinder Singh has joined the investigation.
No recovery has to be effected. Considering the
allegations and age of the accused, no purpose will be
served by detaining the accused further behind the bar.

Hence, accused Manjinder Singh is admitted on bail subject to furnishing personal bail bonds in the sum of Rs.50,000/- (Rupees fifty thousand only) with one surety in the like amount. Requisite bonds furnished. Same are verified, accepted and attested. Papers be tagged with the main file.

Now to come up on 17.12.2015 the date already fixed.”

Aggrieved against the order dated October 28, 2015, the petitioner filed revision petition challenging the order. The said revision petition was dismissed on January 29, 2016 (annexure P-16).

With the above said background, the petitioner seeks the cancellation of bail granted to respondent No.2 on the following grounds:-

- i) That the trial Court or the revisional Court has not taken into consideration the gravity of the accusation that respondent No.2 has committed fraud to the tune of Rs.1.50 crores;
- ii) The letter and spirit of the orders of the Hon’ble High Court and Supreme Court directing respondent No.2 to deposit an amount of Rs.1.25 crores which was reduced to Rs.60 lacs for grant of anticipatory bail have been given a go-bye while considering the application for regular bail;

- iii) The exceptional hurry shown by the trial Court in issuing a notice for the same day and granting bail by directing the petitioner to stay in the Court is apparently illegal;
- iv) The judicial power exercised by the trial Court under Section 437 Cr.P.C. has superseded the orders and powers of the High Court and Supreme Court;
- v) The order of bail has been passed ignoring the fact that pre-arrest bail applications had been dismissed by the Supreme Court as well as twice by the High Court, implying thereby that respondent No.2 was not entitled to be released on bail in case of his arrest;
- vi) The order of bail has been obtained by respondent No.2 in connivance with prosecution agency which managed to file a detailed reply running into multiple pages within few hours, copy of which is appended as annexure P-17 and the order having been passed without even adverting to the contents of the reply annexure P-17.

DEFENCE OF RESPONDENT No.2

Notice was given to respondent No.2 to show cause as to why bail should not be cancelled. As the detailed objections of the prosecution agency in the report annexure P-17 was not considered by the CJM, Chandigarh before granting bail, a notice was also issued to the learned Presiding Officer to report whether the reply had been filed by the prosecution agency before passing of the order on October 28, 2015. Respondent No.2 is represented by Mr.S.P.S. Sidhu, Advocate, who has

submitted that respondent No.2 has been rightly granted concession of bail on having surrendered before the CJM. There is no reason to cancel the bail granted to respondent No.2 by the trial Court and affirmed by the revisional Court.

The comments of CJM received by this Court read as follows:-

“After perusal of the record, it is submitted that application on behalf of respondent No.2 Manjinder Singh for surrender and bail was moved on 28.10.2005 along with copy of order dated 21.10.2015 passed by the Hon’ble High Court. Copy of bail application is annexed as annexure 1 and the copy of orders of Hon’ble High Court dated 21.10.2015 in CRM M- 36523 of 2015 is annexed as annexure 2.

On the basis of this application and orders of Hon’ble High Court, reply was sought from the prosecution and thereafter prosecution had filed 5 ¼ page reply and copy of same is annexed as annexure 3 and it has been referred as Annexure P-17 in order dated 22.3.2016 of Hon’ble High Court. After considering the observations of Hon’ble High Court in this order dated 22.3.2016, the undersigned considers it necessary to bring on record the fact that this reply to the bail application was merely reproduction of remand

application (Annexure 4) and had facts running in 5 pages which were only reproduction of earlier filed remand application and merely 16 lines were added with regard to accused- respondent Manjinder Singh Sodhi.

It is humbly submitted that it appears that applicant- complainant before the Hon'ble High Court has not mentioned of order dated 21.10.2015 of Hon'ble High Court by which the accused Manjinder Singh was directed to surrender before the trial Court within a period of one week from 21.10.2015 and the Hon'ble High Court had directed to dispose of the bail application of the accused as earlier as possible. In the aforesaid circumstances, reply was filed same day and accordingly impugned order was passed.”

After perusal of record, it appears that the learned Magistrate has, along with his comments sent copy of the application filed by respondent No.2 for surrender along with his affidavit, the record of the IVY hospital, order of the High Court dated October 21, 2015 and reply of the investigating officer in response to the application for bail. In order to highlight that the reply to the application for bail was merely reproduction of said remand application and was merely reproduction with 16 lines added to it.

I have heard learned counsel for the petitioner, counsel for the State as well as counsel for respondent No.2. The learned CJM has justified the adjudication of the application for regular bail and grant of regular bail on the same day within few hours taking the shelter of second order of the High Court dated October 21, 2015 which is reproduced hereinabove. The order dated October 21, 2015 clearly indicates that the second petition for pre-arrest bail under Section 438 Cr.P.C. was filed after the first petition had been got dismissed as having been rendered infructuous on September 15, 2015 avoiding compliance of the interim orders of granting conditional interim bail subject to deposit of Rs.1.25 crores with the Registry which was modified by an interim order of the Supreme Court dated August 31, 2015 reducing the amount to Rs.60 lacs and the subsequent dismissal of the petition from the Supreme Court. The reason for dismissal of the first petition under Section 438 Cr.P.C. in Supreme Court is clear indication that respondent No.2 did not intend to discharge his liability in total or in part by complying with the interim directions. The second application under Section 438 Cr.P.C. was filed and withdrawn by making a statement merely to get a direction for disposal of the application for regular bail expeditiously (as soon as possible). The order dated October 21, 2015 did not supersede the earlier interim directions passed by the High Court as well as the Supreme Court.

The explanation rendered by the learned CJM that he was directed to decide the application expeditiously i.e. on the same day

pursuant to the directions dated October 21, 2015, is absolutely an after-thought and unreasonable. The reasoning offered is merely an excuse to justify an illegal order. Had this been the reason, the same could have been mentioned in the order granting bail to respondent No.2 on the same day. The explanation is further unsustainable as the orders of the High Court dismissing the petition under Section 438 Cr.P.C. and the order of the Apex Court and the interim orders passed by the High Court and the Supreme Court, did not lose their authenticity and meaning with the order dated October 21, 2015. The said orders had been specifically brought to the notice of the learned CJM while filing reply to the application running into multiple pages. The relevant operative part of the reply is reproduced hereunder:-

“During the course of investigation it has been established that the above said accused in connivance with Arunjot Singh Sodhi, Jagjit Singh and Hemraj have committed the crime. Huge amount of Rs.1.5 Cr. is involved in this case. On 18.5.2015, accused Arunjot Singh Sodhi and Jagjit Singh have been arrested in the said case and released on bail on 29.5.2015.

During the course of further investigation, accused Manjinder Singh and Hemraj filed their anticipatory bail in the Hon'ble High Court Chandigarh and on 20.3.2015, Hon'ble High Court Chandigarh directed both the

accused to deposit Rs1.25 Crores in the Registry within 4 weeks then anticipatory bail will be considered of both the accused. Thereafter, the accused filed SLP in Hon'ble Supreme Court of India and on 31.8.2015, the Hon'ble Supreme Court of India dismissed the SLP and passed the order that the anticipatory bail granted to the petitioners is confirmed subject to deposit of Rs.60 lacs with the trial Court. The amount be kept in the fixed deposit. Now the accused have filed a modification against the order dated 31.8.2015, in the Hon'ble Supreme Court of India. The vehicle No.PB-65-U-0400 which was registered on the name of Manjinder Sing Sodhi has also been recovered and accused Manjinder Singh Sodhi joined the investigation but during investigation he did not disclose about the whereabouts of other accused Hemraj. Apart from that as per order of the Hon'ble Supreme Court, the accused did not deposit Rs.60 lacs in the trial Court. So, the bail application of the accused Manjinder Singh Sodhi may be dismissed please.”

The learned CJM has made an attempt to evade the above said observations of the High Court and Supreme Court contained in the above said orders by mentioning that the reply was merely a reproduction of

remand application filed regarding co-accused Arunjot Singh and Jagjit Singh.

A perusal of the remand application dated May 19, 2015 and the reply to the application for bail filed in case of Manjinder Singh indicates that in both the documents there is a reference to the orders passed by the High Court as well as by the Supreme Court regarding the liability and the interim directions. The reasoning given by the learned CJM regarding the order of grant of bail, that the same had been passed on the same day under the directions of the High Court, is not acceptable as the said reasoning does not form part of the judicial order. In **Mahinder Singh Gill Vs. Chief Election Commissioner**, AIR 1978 SC 851, it was held that when statutory functionaries make an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Similar is the ratio of **Commissioner of Police Vs. Goverdhan Dass Bhanji**, AIR 1952 SC 16, laying down that fresh reasons cannot supplement the original order.

In view of the aforesaid proposition of law, the reasoning given by the learned CJM that he had passed the order on the same day persuaded by the directions of the High Court to decide the case expeditiously is not acceptable. Another reasons for rejecting the said reasoning is that, the observations of the Supreme Court directing respondent No.2 to deposit sum of Rs.60 lacs instead of Rs.1.25 crores, was required to be respected as per

the mandate of the Constitution under Article 141 of the Constitution of India.

This Court is aware of the law that the Court should be at loath in cancellation of the bail unless and until there are supervening circumstances as has been held in **Ram Charan Vs. State of MP**, 2006 (2) RCR (Crl.) 327. It will not be out of place to refer to the judgment of the Supreme Court in **Subodh Kumar Yadav Vs. State of Bihar**, (2009) 14 SCC 638 wherein the Apex Court was pleased to hold that while cancelling bail, a superior Court will be justified in considering the question whether irrelevant material was taken into consideration by the Court granting bail. In this case, the Magistrate had shown undue haste in granting bail as a result of which the order of Magistrate granting bail on the same day was set aside holding that the order passed by the Magistrate was the result of arbitrary exercise of discretion vested in him and that the totally irrelevant documents had been taken into consideration.

In similar circumstances a Division Bench of this Court in **State of Punjab Vs. Jagjit Singh Chahal**, 2015 (4) RCR (Crl.) 724, a had set aside an order granting bail to an accused in NDPS Act case where the bail was granted to an accused with avoidable haste without considering the full and correct facts. But it is settled principle of law that the “rejection of bail” or “cancellation of bail” are two different situations and need to be considered and dealt with differently. There have to be cogent, reasonable

and overwhelming circumstances necessary for passing an order for cancellation of the bail. The said circumstances would be—

- i) Where an interference and attempt is apparent on the record interfering with the due course of administration of justice or evasion or attempt to evade the due course of justice; or
- ii) There is misuse of concession granted to an accused in any manner;
- iii) Where an order of bail has been passed ignoring the material evidence on the record; and
- iv) The bail has been granted relying upon irrelevant materials;

In the present case, the order passed by the learned CJM granting bail to respondent No.2 on the same day with unexceptional haste is indicative of glaring attempt to over-ride the letter and spirit of the orders of the High Court and the Supreme Court while dismissing the petitions under Section 438 Cr.P.C. It is not being held in this case that dismissal of application under Section 438 Cr.P.C. will debar a Court to exercise discretion to grant bail under Section 439 Cr.P.C. or Section 437 Cr.P.C. in non-bailable offence but in the present case the learned CJM has exercised powers under Section 437 Cr.P.C. in contravention to the basic principles of administration of justice by adopting an arbitrary approach to grant bail on the same day by misconstruing the order of the High Court dated October

21, 2015. It is clarified that whenever a petition for pre-arrest bail is withdrawn by counsel with a prayer that direction should be given to the trial Court to expeditiously dispose of the application for regular bail, the order passed by the High Court should not be misconstrued and misused without appreciating the attending circumstances and the merits of the case and granting relief on the same day. It will be relevant to refer to the statutory provisions of 4th proviso of Section 437 (1) Cr.P.C. added vide Code of Criminal Procedure Amendment Act, 2005 w.e.f. June 23, 2006 which reads as follows:-

“Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.”

Section 437 (4) lays down that a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for doing so. A combined reading of the above said proviso and sub-section 4 of Section 437 Cr.P.C. makes it mandatory for a Court exercising powers under Section 437 Cr.P.C to give an opportunity of hearing to the Public Prosecutor before granting bail and to pass a speaking order giving the special reasons for doing so. The above said proviso clearly implies that a Magistrate granting bail in non-bailable

offences is required not only to give notice to the Public Prosecutor but is also required to record in writing the reasons for granting bail by applying judicious mind to the case put forth by the Public Prosecutor. If a special objection is raised by the prosecution by filing a reply, the same should be kept in mind and considered before granting bail. The recording of reasons in writing implies that the stand of the Public Prosecutor has to be considered.

The order of the learned CJM ignoring the detailed reply given by the prosecution agency referring to the orders of the High Court and the Supreme Court in earlier petitions is a patent illegality and abuse of the process of the Court and requires to be interfered in the interest of justice and to enforce the statutory provisions of law. The order passed by the learned CJM is patently a judicial impropriety and exercise of discretion arbitrarily. The attempt made by the CJM, Chandigarh to justify the illegal order by superimposing the order with additional reasoning deserves to be deprecated. The order granting bail to respondent No.2 on the same day without a speaking order ignoring the letter and spirit of the directions of the High Court deserves to be set aside. The order passed by the revisional Court is absolutely illegal. The revisional Court was required to carefully consider the legality and propriety of the order while exercising the revisional jurisdiction. The order passed by the revisional Court is absolutely not sustainable.

The learned Additional Sessions Judge also fell into a grave error of law in interpreting the orders passed by the Supreme Court by observing that the condition of depositing the amount had been removed by the Supreme Court vide order dated October 12, 2015 and that the condition was with regard to the interim bail and not with regard to the regular bail.

Petition is allowed. Order dated October 28, 2015, passed by CJM, Chandigarh Annexure P-14 well as the order dated January 29, 2016 passed by learned Addl. Sessions Judge, Chandigarh, annexure P-16 are hereby set aside. It is ordered that the bail granted to respondent No.2 shall stand cancelled. It is observed that nothing said in this order will prejudice the rights of respondent No.2 to seek concession of regular bail under Section 437 (1) or Section 439 Cr.P.C. Any observation made by this Court is meant for the purpose of present petition. This order will not be an obstacle for the Courts below to grant regular bail to respondent No.2 by taking into consideration all the circumstances.

May 20, 2016
sanjay

(M.M.S.BEDI)
JUDGE