

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

CRL. MISC. No.M-15894 OF 2016
DATE OF DECISION : 12TH JULY, 2016

Sikander Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. K.D.S. Hooda, Advocate for the petitioner.

Mr. Shilesh Gupta, Additional Advocate General, Punjab.

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A. B. CHAUDHARI, J. (ORAL)

The petitioner has filed the present petition under Section 439 Cr.P.C. seeking regular bail in FIR No.54 dated 10.03.2014 registered under Sections 307 read with Section 34 IPC and Section 25 of the Arms Act at Police Station City Tarn Taran, District Tarn Taran.

Heard learned counsel for the rival parties.

It is not in dispute that by order dated 28.04.2015 by virtue of statutory relief under Section 167(2) Cr.P.C, the petitioner was ordered to be released on bail in FIR No.54 dated 10.03.2014 under Sections 307 read with Section 34 IPC and Section 25 of the Arms Act by furnishing bail bond in the sum of ₹1,00,000. That order became final and was not challenged by the State. Thus the right to have a bail in the aforesaid FIR as per the said order became final and conclusive. The petitioner, however, could not furnish the bail perhaps because of the higher amount of bail inscribed in order dated 28.04.2015. Later he applied to the learned Sessions Judge for permitting him to submit the bail bonds with

surety. The learned Sessions Court, however, dismissed his application inter alia on the ground that during the interregnum, report under Section 173 Cr.P.C. was filed by the Police and therefore his right to get bail, stood extinguished.

In my opinion the order dated 28.04.2015 granting statutory bail to the petitioner having become final and conclusive and in the light of the decision of the Apex Court in the case of ***Moti Ram and others versus State of Madhya Pradesh***, reported as ***AIR 1978 Supreme Court, 1594*** the accused was entitled to furnish bail even upon furnishing personal bond. The view taken by the learned Trial Judge that the order of the statutory bail stood extinguished by lapse of time or by efflux of time is obviously incorrect, illegal and cannot be sustained. Merely because the petitioner could not furnish the bail bonds for some period, there could be no deprivation of the right already accrued in his favour by the Court. There can be no extinguishment of right already accrued within the meaning of Article 21 of the Constitution. In that view of the matter I make the following order:

ORDER

- (i) CRL. MISC. No.M-15894 OF 2016 is allowed
- (ii) Impugned order dated 19.11.2015 (Annexure P-3) is quashed and set aside.
- (iii) The petitioner is permitted to file bail papers/surety in accordance with the order dated 28.11.2015 within a period of two weeks from today and the trial Court shall accept the same and proceed in accordance with law.

12TH JULY, 2016
'raj'

(A. B. CHAUDHARI)
JUDGE