

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16278-2016

Date of Decision: 20.05.2016

Om Parkash

....Petitioner(s)

Versus

State of Haryana

.....Respondent

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

Present: Mr. K.D.S. Hooda, Mr. A.P.S. Mann and
Mr. G.P.S. Bal, Advocates
for the petitioners.

Mr. Deepak Sabharwal, Addl. A.G., Haryana with
Mr. Vikas Malik, DAG, Haryana.

M.M.S. BEDI, J. (ORAL)

This order will dispose of a bunch of 41 petitions bearing the
following numbers:-

1. CRM-M-16278-2016 Om Parkash vs. State of Haryana
2. CRM-M-16556-2016 Basant Singh Vs. State of Haryana
3. CRM-M-16559-2016 Bijender Vs. State of Haryana
4. CRM-M-16560-2016 Ankit Vs. State of Haryana
5. CRM-M-16569-2016 Chhotu Ram @ Pappi Vs. State of Haryana
6. CRM-M-16570-2016 Natwar Dass Vs. State of Haryana
7. CRM-M-16576-2016 Pardeep Vs. State of Haryana
8. CRM-M-16580-2016 Balwant Vs. State of Haryana
9. CRM-M-16581-2016 Raj Kumar @ Raju Vs. State of Haryana
10. CRM-M-16582-2016 Suresh Panchal Vs. State of Haryana
11. CRM-M-16587-2016 Rajinder Vs. State of Haryana
12. CRM-M-16594-2016 Naveen Vs. State of Haryana
13. CRM-M-16595-2016 Naveen Vs. State of Haryana
14. CRM-M-16596-2016 Kuldeep Vs. State of Haryana
15. CRM-M-16602-2016 Mukesh Vs. State of Haryana
16. CRM-M-16608-2016 Surender Vs. State of Haryana

- 17.CRM-M-16611-2016 Vijender @ Vijay Vs. State of Haryana*
- 18.CRM-M-16622-2016 Rajender Vs. State of Haryana*
- 19.CRM-M-16626-2016 Ravi Vs. State of Haryana*
- 20.CRM-M-16628-2016 Ramphal Singh Vs. State of Haryana*
- 21.CRM-M-16631-2016 Sunil Vs. State of Haryana*
- 22.CRM-M-16632-2016 Mohan Singh Vs. State of Haryana*
- 23.CRM-M-16636-2016 Roshan Lal Vs. State of Haryana*
- 24.CRM-M-16638-2016 Lekhraj Vs. State of Haryana*
- 25.CRM-M-16642-2016 Naresh Vs. State of Haryana*
- 26.CRM-M-16643-2016 Digpal Vs. State of Haryana*
- 27.CRM-M-16647-2016 Babu Lal Vs. State of Haryana*
- 28.CRM-M-16683-2016 Rishi Kumar Vs. State of Haryana*
- 29.CRM-M-16785-2016 Gurdeep Vs. State of Haryana*
- 30.CRM-M-16795-2016 Jashwant Vs. State of Haryana*
- 31.CRM-M-16800-2016 Parminder Vs. State of Haryana*
- 32.CRM-M-16804-2016 Nek Ram Vs. State of Haryana*
- 33.CRM-M-16806-2016 Surender Vs. State of Haryana*
- 34.CRM-M-16807-2016 Ganesh @ Rajesh Vs. State of Haryana*
- 35.CRM-M-16808-2016 Ramesh Chander Vs. State of Haryana*
- 36.CRM-M-16809-2016 Karta Ram Vs. State of Haryana*
- 37.CRM-M-16810-2016 Hitender Vs. State of Haryana*
- 38.CRM-M-16811-2016 Rajesh Kumar Dass Vs. State of Haryana*
- 39.CRM-M-16812-2016 Joginder Singh @ Billu Vs. State of Haryana*
- 40.CRM-M-16814-2016 Naveen Vs. State of Haryana*
- 41.CRM-M-16866-2016 Mukesh Vs. State of Haryana*

Petitioners have filed the present applications for regular bail invoking the provisions under Section 439 Cr.P.C. claiming that the petitioners had been in custody for more than one year.

Before I take into consideration the merits of the case, the maintainability and propriety of the petitions to entertain these petitions, under Section 439 Cr.P.C., direct by this Court, requires to be considered in context to the arguments raised by counsel for the petitioners.

Learned counsel for the petitioners have submitted that on

01.04.2016 and 22.04.2016 this Court had entertained *CRM-M No.6917 of 2016* titled *Babita @ Baby Vs. State of Haryana* and *CRM-M No.12376 of 2016* titled *Dharambir Vs. State of Haryana* respectively. Those two applications were directly filed before this Court under Section 439 Cr.P.C. and this Court has granted concession of regular bail in both the applications. Further, it has been submitted that there is absolutely no bar for this Court to entertain any application under Sections 438 or 439 Cr.P.C. directly as the jurisdiction of this Court and that of the Sessions Court is concurrent for adjudication of the bail/anticipatory bail applications. Counsel have placed reliance upon a judgment in “*Sundeep Kumar Bafna Vs. State of Maharashtra and another 2014 AIR (SC) 1745*” wherein the facts were that the accused had absconded after commission of non-bailable offence; he had opted to surrender directly before the High Court and prayed for bail; taking into consideration the legal situation under Section 437(1) Cr.P.C, and observing that in said situation the person will be deemed to be in custody/detention as per the requirement of Section 437 (1) Cr.P.C, the Apex Court was pleased to grant bail to the accused observing that the Single Bench of the High Court had erred in law in holding that the High Court in said situations was devoid of jurisdiction to grant bail.

They have also referred to a judgment of Division Bench of Kerala High Court in *Balan Vs. State of Kerala, 2003(4) R.C.R. (Criminal) 733* wherein it has been observed that a person seeking bail is not bound to approach the Court of Session before he can move High Court for seeking bail.

I have considered the contentions of learned counsel for the

petitioners. There is no dispute regarding the authority of High Court in the exercise of jurisdiction under Sections 438 and 439 Cr.P.C. to entertain an application for bail and grant relief but the judicial propriety demands that a person seeking relief under Sections 438 or 439 Cr.P.C. should approach the Courts below at the first instance.

So far as relief granted to Babita and Dharamvir on 01.04.2016 and 22.04.2016 respectively by this Court is concerned, I have confirmed it from the record that on each of the said dates there were two bail applications arising out of the same FIR in which one of the accused had approached this Court for bail under Section 439 Cr.P.C. after having been unsuccessful before the trial Court.

It is not out of place to mention here that there are about 942 accused persons in FIR No.428 dated 18.11.2014, registered at Police Station Barwala, Hisar regarding an incident in which a number of followers of Baba Rampal had obstructed the police authorities in their attempt to enter Satlok Ashram to serve Baba Rampal. A large number of bail applications are coming up on different dates before this Court and this Court has been granting bail to number of accused persons depending upon situation of each case. Bail has been granted to Babita and Dharamvir by this Court along with other accused in connected cases in which the accused had first approached the Sessions Court. On account of 67 number of bail applications fixed before this Court on 01.04.2016 and 61 number of bail applications fixed before this Court on 22.04.2016 having been heard and decided, it appears that it escaped my notice that those two applicants had not approached the Sessions Court in the first instance. It was never intended to create a precedent that an

application under Sections 438 and 439 Cr.P.C. could be filed directly before this Court.

Besides this, it will not be out of place to observe here that since a Senior Advocate had been appearing on behalf of the applicants on 01.04.2016 as well as 22.04.2016, it was expected that the applications had been in order. Bail has been granted to Babita and Dharamvir on account of an inadvertent omission on account of rush of work and unknown of the fact that the applications had been filed directly before this Court. It is observed that any order having been passed in the said applications is not intended to create a judicial precedent for entertaining any application under Sections 438 and 439 Cr.P.C. directly by this Court. Vesting of authority to adjudicate the matter will not *ipso facto* mean that power has to be exercised by ignoring judicial propriety.

I have reconsidered the orders passed in Babita and Dharamvir's cases and I do not find any ground to recall the said orders at this stage as those applicants have already been released on bail.

In view of the above discussions, I have considered the judgments cited by counsel for the petitioners. As observed above, the facts in *Sundeep Kumar Bafna's* case (*supra*) were absolutely different and are not applicable to the present case. Similarly, the judgment of the Division Bench of Kerala High Court is also not relevant for holding that in each case the accused has got liberty to approach the High Court directly unless until there are extraordinary exceptional situations warranting High Court to exercise the said jurisdiction. It is always open to the High Court, in a peculiar circumstance, to exercise such

jurisdiction but the situations of each case are to be considered and such extraordinary jurisdiction has to be exercised depending upon the exigency and requirement of the extra ordinary situation. I do not find any such exigency or requirement in the present case. Had the petitioners in the present application approached the Sessions Court under Section 439 Cr.P.C. for bail in the first instance, it would have facilitated this Court to fairly appreciate the allegations against each petitioner and the material available in the report under Section 173 (2) Cr.P.C. to effectively exercise the jurisdiction under Section 439 Cr.P.C.

The applications are dismissed as not maintainable relegating the petitioners to first approach the Sessions Court/trial Court to seek the concession of bail.

It will be appreciated in case the Court of competent jurisdiction decides the applications expeditiously, in case the petitioners opt to approach the said Court.

Nothing said in this order will affect the merits of the applications of the petitioners to be filed before the Sessions Court/trial Court. It will be open to the trial Court to consider the individual merit of each of the bail application and grant relief if deemed appropriate in individual case.

A photocopy of this order be placed on the file of other connected cases.

May 20, 2016
ps-I

(M.M.S. BEDI)
JUDGE