

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-24528 of 2016 (O&M)

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Date of decision:30.11.2016

Malkiat Kaur

.....Petitioner

v.

State of Punjab and others

.....Respondents

....

Present: Mr. T.P.S. Tung, Advocate for the petitioner.

Mr. Varun Sharma, Assistant Advocate General, Punjab for
the respondent-State.

Mr. Amit Dhawan, Advocate for respondent No.5.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of the common order dated 13.7.2016 (Annexure-P.10) passed in Cr. Revision No.215 of 2015 titled as “Palvinder Lalli Vs. State of Punjab and another” and Cr. Revision No.348 of 2016 titled as “State of Punjab Vs. Malkiat Kaur” passed by learned Additional Sessions Judge, Jalandhar (NRI Court) vide which a well reasoned order dated 2.5.2015 (Annexure-P.7) passed by learned Sub Divisional Judicial Magistrate, Nakodar, has been set aside and for staying the operation of the order Annexure-P.10 till the final decision of the present petition.

Notice of motion was issued in this case.

Mr. Varun Sharma, learned Assistant Advocate General, Punjab

has put in appearance on behalf of the respondent-State and Mr. Amit

Dhawan, learned Advocate has appeared for respondent No.5 and contested this petition.

I have heard learned counsel for the parties as well as learned Assistant Advocate General, Punjab and have gone through the record.

From the record, I find that in the FIR No.339 dated 18.12.2012 registered for the offences under Sections 420, 465, 467, 468, 471, 477-A and 120-B IPC at Police Station Nakodar, District Jalandhar City, anticipatory bail application has been allowed by the Hon'ble Supreme Court vide order dated 25.11.2013. The Hon'ble Supreme Court passed the order, the relevant portion of which is as under:-

“We dispose of this Special Leave Petition making the said interim bail granted on 7th May, 2013 absolute. In case, however, the petitioner does not cooperate with the Police in the investigation, it will be open for the arresting authority/ investigating authority to move the trial Court for arrest of the petitioner and if the trial Court is moved, it will pass appropriate orders without being influenced by this Court's order granting anticipatory bail to the petitioner.”

As per the record as well as the arguments, it is admitted fact that Malkiat Kaur-petitioner, after the order granting anticipatory bail, has joined the investigation. There is no dispute regarding the fact that Malkiat Kaur ever refused to join the investigation. Then the applications were filed after the joining of Malkiat Kaur in the investigation before the learned Sub Divisional Judicial Magistrate, Nakodar, to cancel the bail order by the

complainant as well as the State under Section 439(2) Cr.P.C. The learned Sub Divisional Judicial Magistrate, Nakodar, has passed a well reasoned order even by discussing the zimini recorded by the DSP of Sub Division Nakodar on 15.12.2014 and 20.1.2015 and observed that the DSP concerned even intensively questioned her on 20.1.2015 and she duly answered the said questions and she even stated that she is bound to appear in connection with the investigation as and when called by the investigating agency and dismissed the applications. The learned Sub Divisional Judicial Magistrate, Nakodar, also observed in the order that she (Malkiat Kaur) even stated that she will appear but she has already given the record which was in her possession and she was not in possession of any other record and thus, cannot deliver the same. The Court observed in the order that the DSP vide the said zimini dated 20.1.2015 made an observation that accused Malkiat Kaur is an aged widow and very less educated lady and she even admitted that she has signed in the name of Palwinder Kaur alias Lalli, but in ignorance on account of being less educated. The DSP has also observed that Malkiat Kaur appeared as and when she is called. Moreover, the challan has already been prepared and has been passed by the Deputy DA and it is futile to keep it pending. Even the DSP concerned asked the SHO concerned to present the said challan in the Court. The learned Magistrate held that the above said zimini throw sufficient light on the investigation being conducted in this case and it is very much clear that accused Malkiat Kaur is not, in any manner, misusing the concession of anticipatory bail granted to her by the Hon'ble Apex Court and she has already duly joined

the investigation and has been interrogated by DSP of Sub Division, Nakodar himself. Even the Magistrate from the Police record also observed in the order that record also shows that challan in this case has already been prepared by the Investigating Agency against the accused Malkiat Kaur on 26.1.2014. But the same has not been presented in the Court till date. The Court also held that this application for cancellation of bail has been moved after preparation of the challan by the concerned Police Station. The reasoning given by the learned Magistrate are correct as per record and law. No illegality has been committed by the learned Sub Divisional Judicial Magistrate, Nakodar, while dismissing these applications filed by the State and by the complainant for cancellation of anticipatory bail. The only ground for cancellation of the anticipatory bail is if it would be shown that Malkiat Kaur is not cooperating with the Police. There is no such zimini by the DSP that she is not cooperating during the investigation. If there is any defect in the investigation or lapse on the part of the DSP, the anticipatory bail granted to Malkiat Kaur cannot be cancelled. The State counsel as well as the counsel for the complainant failed to show me any zimini or any record showing that Malkiat Kaur has not cooperated with the Investigating Officer and it is so recorded in the Police file.

Therefore, the order passed by the learned Sub Divisional Judicial Magistrate, Nakodar, on 2.5.2015 is correct as per law. The revisional/Sessions Court without any cogent ground has interfered in the order and set aside this order. I have also gone through the order of the Sessions Court passed by the learned Additional Sessions Judge, Jalandhar,

which is not as per law. The learned Additional Sessions Judge is not supposed to now go through the gravity of the offences that has already been seen by the Hon'ble Supreme Court while granting anticipatory bail to the petitioner. The only point, at this stage, is to be seen whether she was cooperating with the investigation or not. There is nothing on record to show that Malkiat Kaur was not cooperating with the Investigating Officer.

Therefore, the order dated 13.7.2016 (Annexure-P.10) passed by learned Additional Sessions Judge, Jalandhar (NRI Court) in the revision is not as per law and the same is set aside. The order dated 2.5.2015 passed by the learned Sub Divisional Judicial Magistrate, Nakodar, is upheld.

Finding merit in the petition, the same is allowed.

November 30, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No