

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30178-2015(O&M)

Date of decision : 02.06.2016

STATE OF PUNJAB

..... PETITIONER

versus

BALBIR SINGH @ BEERA

..... RESPONDENT

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Rajesh Mehta, Addl.AG, Punjab
for the petitioner.

Ms.Prabhjeet Kaur, Advocate
for the respondent.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This is a petition for cancellation of regular bail granted to the
respondent

Bail was granted to the respondent by order dated 02.12.2014 in
the following terms:-

“ This is a petition for regular bail filed in case bearing FIR
No. 208 dated 07.09.2014, under Sections 15/25/61/85 of the
NDPS Act, registered at Police Station Samrala, Police District
Khanna, District Ludhiana.

Learned counsel for the petitioner has relied upon the
order of this Court passed in CRM-M No. 11592 of 2014
decided on 11.04.2014 which is to the following effect:-

“ For having found in possession of 4 bags of poppy
husk containing 20 kgs. each, the petitioner along with
two otherwise has been in custody w.e.f. 14.1.2013. No
witness has been examined. Petitioner has not earlier
been involved in any such case.

Taking into consideration the period of detention
suffered by the petitioner and the quantity of the poppy

husk which was found jointly in possession of three persons, the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial Court subject to the conditions that the petitioner will not commit the similar offence of which he is accused of. In case of any such eventuality, this order will be deemed to have been cancelled.”

Learned Addl.AG has not been able to point out how this order will not be applicable.

In the circumstances, I do not deem it appropriate to deny the the concession of bail to the petitioner. Let he be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the trial Court.

Petition stands disposed of.

Since the main case has been decided, the Criminal Misc. Application, if any also stands disposed of.”

Learned Addl.AG has argued that it could not be brought to the notice of the Court that while in the previous case the custody was 15 months, in the present case the custody was less than three months and consequently that previous order was not available. He also pointed out that in a subsequent case where this distinction was pointed out this Court had refused to grant bail. As per him the respondent did not intentionally mention in the petition the fact that he had undergone custody exact about three months. Learned counsel for the respondent has relied upon **Abdul Basit alias Raju and others etc. v. Md. Abdul Kadir Chaudhary and another** reported as 2015(1) SCC (Cri) 257 where the Hon'ble Supreme Court has held as follows:-

“ 22. Reverberating the aforesaid principle, this Court in the recent decision in *Ranjit Singh v. State of M.P. and others*, 2013(4) RCR(Criminal)600; 2013(5) Recent Apex Judgments(R.A.J.) 492; 2013(12) SCALE 190 has observed that:

20..... There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant

material, it can be annulled by the superior court.”

23. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which reacquire such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the Court superior to the Court which granted the bail and not by the same Court.

24. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the Court and indulging in fraud. Thus, the petition challenged the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law.

25. It is an accepted principle of law that when a matter has been finally disposed of by a Court, the Court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the pervious order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the Court passing such judgment and order in absence of any express provision in the Code of the same. Section 362 of the Code operates as bar to any alteration or review of the cases disposed of by the Court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the Court.”

In this view of the matter even if the factual submissions made by learned Addl.AG are taken to be correct this Court cannot cancel the bail.

Petition is dismissed.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

June 02, 2016
sunita

(AJAY TEWARI)
JUDGE