

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

***CRM No.M-37739 of 2015
Date of decision:06.01.2016***

Amar Kumar

... Petitioner

Vs.

State of Punjab & another

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Navjot Singh, Advocate for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

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TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 439(2) Cr.P.C. seeking cancellation of the benefit of anticipatory bail granted in terms of order dated 24.09.2015 (Annexure P-1) by the learned Additional Sessions Judge, Sri Muktsar Sahib in favour of Salil Narain, respondent No.2 pertaining to FIR No.62, dated 08.07.2015, under Sections 420/465/467/468/471/120-B IPC, registered at Police Station Kabarwala.

Notice of motion in the present petition was issued on 20.11.2015 and returnable for 04.12.2015. On 04.12.2015, since the office report reflected that notice issued to respondent No.2 had not been received served or otherwise, accordingly, fresh notices were directed to be issued for 22.12.2015 and *dasti* as well. Perusal of the office report placed on record dated 21.12.2015 would reveal that *dasti* notices issued to respondent No.2 have been received back with a report that he was not present at the given address but his brother was present and had refused to accept the notice.

Apparently, respondent No.2 is evading service.

Suffice it to notice that respondent No.2 is also an accused in FIR No.74 dated 08.05.2010 for offence under Sections 420/465/467/471/120-B IPC registered at Police Station City Malout. After completion of investigation, challan was duly presented. Matter was pending before the trial Court on 25.08.2014 and for such date accused Sunil Narain moved an application for exemption supported by a medical certificate dated 21.08.2014 allegedly issued by Patna Medical College, Patna. It so transpires that upon inquiries having been conducted by the present petitioner/complainant, namely, Amar Kumar, the medical certificate dated 21.08.2014 was found to be fabricated and which led to the filing of a complaint and upon which FIR in the present case i.e. No.62, dated 08.07.2015 was registered. It was upon an application having been moved under Section 438 Cr.P.C. that the order dated 24.09.2015 (Annexure P-1) was passed by the learned Additional Sessions Judge, Sri Muktsar Sahib granting the concession of pre-arrest bail and which is sought to be cancelled in terms of the present petition. Perusal of the impugned order dated 24.09.2015 would reveal that while granting the concession of pre-arrest bail to respondent No.2, a factor that had weighed heavily with the Court was that the complainant (present petitioner) had filed an application for initiation of proceedings under Section 340 Cr.P.C. and the Court had observed that since the Competent Court had already initiated proceedings and was conducting an inquiry on the application under Section 340 Cr.P.C. and as such the police was not competent to investigate or to inquire into the matter under such circumstances.

It would be apposite to notice that in para 6 of the instant petition, categoric averments have been made by the complainant that even

though application under Section 340 Cr.P.C. had been moved but till date even notices had not been issued in such application. In the reply filed on behalf of the State to the present petition, contents of para 6 of the petition have not been disputed. Clearly, the observations made in the impugned order as regards the inquiry having already been initiated and proceedings under Section 340 Cr.P.C. being under way are factually incorrect.

It would also be pertinent to take notice of the stand taken on behalf of the State in the reply wherein it has been clearly stated that the medical certificate dated 21.08.2014 that had been placed reliance upon by respondent No.2/accused and issued by the Orthopedic Department, Patna Medical College, Patna has been found to be fake and forged upon due verification having been conducted.

Under such circumstances, this Court is of the considered view that Salil Narain, respondent No.2 was not entitled to the concession of anticipatory bail.

The present petition is allowed. The impugned order dated 24.09.2015 (Annexure P-1) passed by the learned Additional Sessions Judge, Sri Muktsar Sahib is set aside. The interim protection granted in favour of respondent No2, Salil Narain shall cease to operate.

Disposed of.

06.01.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**