

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14041 of 2017
Date of Decision: 06.07.2017

Amit Lamba

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Tapan Kumar Yadav, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 482 Code of Criminal Procedure seeking quashing of order dated 16.03.2017 (Annexue P-8) passed by Additional Sessions Judge, Rohtak dismissing the revision petition and order dated 20.02.2017 (Annexure P-7) passed by learned Additional Chief Judicial Magistrate, Rohtak vide which application of petitioner seeking bail under Section 167 (2) Cr.P.C., was dismissed.

Heard.

On the application filed by police dated 19.09.2016 to issue production warrant of petitioner, direction was issued to Superintendent, District Jail, Tihar, Delhi to produce the petitioner in this case and he was produced in Court on 04.11.2016. On that day, an application was moved by SHO, Police Station, Civil Lines, Rohtak (Annexure P-5) which reads as follows:-

*“In the above mentioned case the judicial remand of the
above said accused has expired today and the accused is*

produced in the Court. The investigation is pending in the above mentioned case. The judicial remand of the accused for 14 days may be granted and order may be passed for keeping the accused in jail.”

On the application of police, learned Magistrate passed order remanding the petitioner to judicial custody till 18.11.2016. However, on 18.11.2016, learned Additional Chief Judicial Magistrate, Rohtak passed order that accused Amit Lamba was not joined in investigation and was taken into custody on 27.09.2016, as such, his remand papers be not put up.

The question, which arises for consideration in this petition, is as to whether order dated 04.09.2016 passed by learned Magistrate, Rohtak amounts to arrest of petitioner in case bearing FIR No. 534 dated 01.07.2016 registered at Police Station Civil Lines, Rohtak?

The petitioner was produced in this case on production warrants issued on the request of police, which sought judicial remand of the petitioner during pendency of investigation. Learned Magistrate (Duty) had allowed 14 days judicial remand pending investigation. All this is indicative of the fact that petitioner was arrested in this case and was remanded to judicial custody. When the petitioner moved application seeking bail as per provisions of Section 167 (2) Cr.P.C., the same was declined on the ground that he is not in custody in this case and the application is not maintainable. The order passed by learned Magistrate, Rohtak and affirmed by learned Additional Sessions Judge, Rohtak vide order dated 16.03.2017 are apparently not correct. The petitioner was in custody and was sent to jail on the request of police. To join the accused arrested by the police in investigation is the duty of investigating officer and

the accused has no role to play in this matter.

It has been submitted that challan in this case has not been arrested so far. As the stipulated period of more than 60 days has already elapsed, petitioner is entitled for bail under Section 167 (2) Cr.P.C., this petition is allowed and the petitioner-Amit Lamba is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate, subject to following terms:-

- (a) The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- (b) In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- (c) He shall not leave the country without the previous permission of the Court.

July 06, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No