

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

CRM -M-17714 of 2017 (O&M)

Date of decision: 26.05.2017

Rakesh Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.S. Cheema, Senior Advocate with
Mr. Shahid Azad, Advocate,
Ms. Meenu Sharma Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.
assisted by ASI Anil Kumar.

Mr. Alok Mittal, Advocate for the complainant.

Jitendra Chauhan, J. (Oral)

By filing the present petition, under Section 439 of the Code of Criminal Procedure, the petitioner has sought regular bail in FIR No. 456 dated 30.06.2016, registered under Sections 406, 420 and 506 of IPC, at Police Station Sector 7, Faridabad.

The petitioner had been admitted to bail, vide order dated 08.11.2016. The matter came up for hearing on 09.02.2017, whereby an application for exemption of personal appearance was circulated on behalf of the petitioner which was subsequently allowed. On the next date of hearing i.e. 15.03.2017, another application for exemption was moved on behalf of the petitioner which was rejected and non-bailable warrants were issued against the petitioner.

It is contended that from the evidence, it is made out that the petitioner has been suffering from some eye ailment on the basis of which

the first exemption dated 09.02.2017 was allowed. The learned senior counsel submits that the learned Court on 15.03.2017 failed to take notice of the fact that the petitioner had suffered an eye injury and on the previous date, medical record depicting the same had been produced before the Court. The petitioner is in custody since 10.04. 2017.

On the other hand, the learned State counsel opposes the bail application.

The learned counsel for the complainant also opposes the bail application and states that the bail was allowed on the basis of compromise. In pursuance of the compromise, the petitioner issued cheques which on presentation were dishonoured.

Heard.

In Court on its own Motion Vs. Central Bureau of Investigation, ILR 2004(1) Delhi, 47, the following directions for Criminal Courts have been issued:-

(i) Whenever officer-in-charge of police station or Investigating Agency like CBI files a charge-sheet without arresting the accused during investigation and does not produce the accused in custody as referred in Section 170, Cr.P.C. the Magistrate or the Court empowered to take cognizance or try the accused shall accept the charge-sheet forthwith and proceed according to the procedure laid down in Section 173, Cr.P.C. and exercise the options available to it as discussed in this judgment. In such a case the Magistrate or Court shall invariably issue a process of summons and not warrant of arrest.

(ii) In case the Court or Magistrate exercises the discretion of issuing warrant of arrest at any stage including the stage while taking cognizance of the charge-sheet, he or it shall have to

record the reasons in writing as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him.

(iii) Rejection of an application for exemption from personal appearance on any date of hearing or even at first instance does not amount to non-appearance despite service of summons or absconding or failure to obey summons and the Court in such a case shall not issue warrant of arrest and may either give direction to the accused to appear or issue process of summons.

(iv) That the Court shall on appearance of an accused in a bailable offence release him forthwith on his furnishing a personal bond with or without sureties as per the mandatory provisions of Section 436, Cr.P.C.

(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.

(vi) That the Court shall always keep the mandatory provisions of Section 440, Cr.P.C. in mind while fixing the amount of bail bond or surety bond which provides that the amount of bond shall never be "excessive" amount and take into consideration the financial condition, the nature of offence and other conditions, as "Excessive" amount of bond which a person is not in a position to furnish amounts to denial of bail in a non-bailable offence and

conversion of bailable offence into non-bailable offence as the fundamental concept of granting bail on bond is security of appearance of the accused person to answer the charges and face the trial. Nothing more nothing less.

The issue before this Court is whether order dated 15.03.2017 rejecting the exemption application could have been passed in the facts & circumstances of the present case. It has specifically come on record that the petitioner had been suffering from some eye ailment, on the basis of which personal exemption had been granted. Considering the fact that the interregnum period from the first exemption i.e. 09.02.2017 and the impugned order when the exemption was declined being not alarmingly huge and the trial is at the preliminary stage; the charges have not been framed; though the petitioner is involved in other FIR(s), however, considering the medical evidence on record, this Court is inclined to accept the prayer made in the present petition. Without advertng to the merits of the instant case, this petition is allowed. The petitioner be admitted to bail during the pendency of trial, on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

26.05.2017

sumit.k

(JITENDRA CHAUHAN)

JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No