

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

CRM-M-28129-2016

Date of decision :19.07.2017

Akash @ Sootar and others

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Deepak Hooda, Advocate for
Mr. K.D.S. Hooda, Advocate
for the petitioners.

Mr. D.R. Singla, DAG, Haryana.

Mr. Anshumaan Dalal, Advocate for complainant.

SUDIP AHLUWALIA, J. (Oral)

The petitioners have filed the present petition for quashing of the impugned order dated 08.08.2016 passed by the learned Additional Sessions Judge, Rohtak in CRR No.20 of 2016.

Background of the matter is that the present petitioners were involved in FIR No.174 dated 18.03.2016, Police Station Sadar, Rohtak under various offences including Section 302 IPC. They were arrested on 21.03.2016 and subsequently released on statutory bail by the learned Judicial Magistrate 1st Class, Rohtak, on 22.06.2016 vide order (Annexure P-1). The reason behind passing the bail order was that the Police had failed to complete the investigation and to submit challan against them within the statutory period. It transpires that the reason behind this view of the learned Magistrate was the wrong report submitted by a ministerial staff attached to that Court to the effect that no challan had been received. However, challan had already been sent up by the Police authorities earlier on 14 June, which

or otherwise. We need not to speculate on this matter any further since in compliance of the previous orders passed by a Co-ordinate Bench disciplinary proceedings have been initiated against the erring staff/Ahlmad attached to the Court of the Ld. Magistrate.

The point for consideration now is, whether the Ld. Revisional Court was justified in cancelling the bail granted to the petitioners on account of the essential mistake of fact?

Learned counsel for the petitioner has placed reliance upon the decision of a Co-ordinate Bench of this Court in **Gurcharan Singh @ Mintu v. State of Haryana**, 2016 (1) Law Herald (Punjab and Haryana) 679, in support of his contention that presentation of the challan before the Court staff/Ahlmad has not been properly done which ought to have been submitted before the Competent Magistrate himself. Reliance has been placed on the following observations of the Co-ordinate Bench:-

“It is clear that the challan is to be presented before the Magistrate and not before the Ahlmad. The challan was presented at 4.45 PM i.e. after the Court hours. If the Magistrate was not available, then challan could have been presented at the residence of the Illaqa Magistrate or before the Duty Magistrate. It is to be noted that it is not disputed that 11.11.2015 and 12.11.2015 were holidays being second Saturday and Sunday. The order of the Magistrate shows that when the application under Section 167 (2) Cr.P.C. was moved and only when the Magistrate called for the report from the Ahlmad, the Ahlmad brought to the notice of the Court that challan was presented before him at 4.45 PM on

10.11.2015. Original file has also been called for, which also bears the same fact. In fact, the Ahlmad gave the receipt to the investigating officer regarding receipt of challan on 10.11.2015 at 4.45 PM.”

After considering the decision of the Co-ordinate Bench and in the light of submissions made on behalf of the contesting sides, it is noted that notwithstanding the observations that presentation of challan before the Ahlmad does not amount to a proper presentation which in all propriety has to be done before the Magistrate, the Ld. Court nevertheless held that the accused persons in that case 'did not acquire any indefensible right for bail under Section 167 (2) Cr.P.C.' Consequently, application of those petitioners was rejected by this Court.

This Court is also of the view that the Police authorities cannot be made liable for the omission on the part of any ministerial staff of the Court. From their angle they had completed the investigation and sent up the challan within the permissible time whereas it was failure on the part of the Court machinery that the same was not brought to the notice of Magistrate concerned. So the learned Revisional Court was right in passing the impugned order for cancelling the bail granted to the petitioners under the impression that no such challan had been presented within the statutory period.

Accordingly, there is no merit in the petition and the same is hereby dismissed.

19.07.2017
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(SUDIP AHLUWALIA)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No