

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) CRM No.M-31994 of 2017 (O&M)

Deepak Singh ...Petitioner

VERSUS

State of Punjab and another ...Respondents

(2) CRM No.M-32000 of 2017 (O&M)

Deepak Singh ...Petitioner

VERSUS

State of Punjab and another ...Respondents

(3) CRM No.M-32003 of 2017 (O&M)

Deepak Singh ...Petitioner

VERSUS

State of Punjab and another ...Respondents

(4) CRM No.M-32006 of 2017 (O&M)

Deepak Singh ...Petitioner

VERSUS

State of Punjab and another ...Respondents

(5) CRM No.M-32007 of 2017 (O&M)

Deepak Singh ...Petitioner

VERSUS

State of Punjab and another ...Respondents

(6)

CRM No.M-32013 of 2017 (O&M)

Deepak Singh

...Petitioner

VERSUS

State of Punjab and another

...Respondent

(7)

CRM No.M-32016 of 2017 (O&M)

Deepak Singh

...Petitioner

VERSUS

State of Punjab and another

...Respondents

(8)

CRM No.M-32022 of 2017 (O&M)

Deepak Singh

...Petitioner

VERSUS

State of Punjab and another

...Respondents

Date of Decision: October 26, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.V.K.Sachdeva, Advocate
for the petitioner.

Mr.Ayush Sarna, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Piyush Kant Jain, Advocate
for respondent No.2.

INDERJIT SINGH, J.

cases as the point for determination in all the cases is the same.

The above-mentioned petitions have been filed by petitioner-accused under Section 482 Cr.P.C. for partially quashing the impugned orders 11.08.2017 passed by learned Addl. Sessions Judge, Ludhiana in criminal appeals No.580, 581, 583 to 588 of 2017 whereby while suspending the sentence, learned Addl. Sessions Judge, Ludhiana, has imposed a pre-condition to deposit ₹25 lakhs in each case totaling to ₹2 crore for grant of bail to the petitioner in eight criminal appeals filed against the eight different conviction and sentence orders dated 10.07.2017 passed by learned JMIC, Ludhiana, under Section 138 of the Negotiable Instruments Act, thus virtually defeating the legal right of statutory first appeal of the petitioner and amounting to refusal for grant of bail in a bailable offence in complete violation of law laid down by the Hon'ble Supreme Court and this Court and also ignoring that no compensation could have been awarded against the petitioner since the petitioner is not personally liable for the liability of the convict company and is also not liable for the compensation amount in his personal capacity etc.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petitions.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that as per the impugned order dated 11.08.2017 passed by learned Addl. Sessions Judge, Ludhiana, petitioner-applicant was admitted to bail on furnishing bail bonds and surety bonds for a sum of ₹75,000/- with one surety in the like amount to the satisfaction of

accept the bail bonds and surety bonds subject to the condition that appellant-applicant will have to deposit before learned trial Court/Duty Magistrate of ₹25 lakhs i.e. 1/4th of the total amount of the compensation at the time of furnishing bail bonds and surety bonds.

In all the eight cases, the petitioner was directed to deposit ₹25 lakhs each totaling to ₹2 crores. The perusal of the impugned order shows that in the order, the trial Court has not discussed the capacity of the petitioner to deposit the said amount. As per judgments of conviction and orders of sentence passed by learned JMIC, Ludhiana, the petitioner has been sentenced to undergo rigorous imprisonment for a period of two years and to pay compensation to the tune of ₹1 crore to the complainant-respondent No.2 in each case. Aggrieved from the above judgments of conviction and orders of sentence, appeals were filed by the petitioner, in which, the impugned orders, suspending the sentence of petitioner have been passed by learned Addl. Sessions Judge, Ludhiana, but with the condition to deposit ₹25 lakhs in each case.

Learned counsel for the petitioner argued that this condition of depositing the amount cannot be imposed and in support of his arguments, he cited judgment passed by this Court in ***CRR No.1867 of 2014 titled as Smt.Sunita Gupta vs. Manoj Kumar Mittal decided on 18.09.2014***, in which, by considering the law laid down in ***Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. & Anr. 2007(2) RCR (Criminal) 636***, it is held that the impugned order directing to deposit of ₹10 lakhs cannot be sustained. Learned counsel for the petitioner also cited judgment passed by the Hon'ble Supreme Court in ***Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. & Anr.***

passed by the Hon'ble Supreme Court in ***Somnath Sarkar vs. Utpal Basu Mallick and another, 2013(4) RCR (Criminal) 648***, in which it is held as under:-

“The second aspect relates precisely to the need for appreciating that the power to award compensation is not available under Section 138 of Negotiable Instruments Act. It is only when the Court has determined the amount of fine that the question of paying compensation out of the same would arise. This implies that the process comprises two stages. First, when the Court determines the amount of fine and levies the same subject to the outer limit, if any, as is the position in the instant case. The second stage comprises invocation of the power to award compensation out of the amount so levied. The High Court does not appear to have followed that process. It has taken payment of Rs.80,000/- as compensation to be distinct from the amount of fine it is imposing equivalent to the cheque amount of Rs.69,500/-. That was not the correct way of looking at the matter. Logically, the High Court should have determined the fine amount to be paid by the appellant, which in no case could go beyond twice the cheque amount, and directed payment of compensation to the complainant out of the same. Viewed thus, the direction of the High Court that the appellant shall pay a further sum of Rs.69,500/- does not appear to be legally sustainable as rightly observed by my erudite Brother Vikramajit Sen, J. I, therefore, entirely agree with my Brother's view that payment of a further sum of Rs.20,000/- towards fine, making a total fine of Rs.1,00,000/- (Rupees one lac) out of which Rs.80,000/- has already been paid as compensation to the complainant, should suffice. The amount of Rs.20,000/- (Rupees twenty thousand) now directed to be paid shall not go to the complainant who is, in our view, suitably compensated by the amount already received by him. In the event of failure to pay the additional amount of Rs.20,000/- the appellant shall undergo imprisonment for a period of six months. With these words, I concur with the order proposed by Brother Vikramajit Sen, J.”

Learned counsel for the petitioner also cited judgment passed by the ***Hon'ble Rajasthan High Court in Amarveer Singh vs. Sate of Rajasthan and others, 2010(3) RCR (Criminal) 556***, on the same point, in which it is held that for suspension of sentence during appeal, onerous conditions should not be imposed. Such imposition is virtually denial of

bail to the accused even though he is entitled for the same. It is also held that when a matter is considered for hearing and the substantive sentence of the petitioner is ordered to be suspended then imposition of condition of payment of amount, out of fine or compensation, is not at all justified. This would mean that if a person who is not in a position to make payment of the said amount, his sentence would not be suspended and he would be deprived of hearing of appeal and will have to undergo sentence, although ultimately he may be acquitted.

Learned counsel for the petitioner also placed reliance upon the judgments passed by this Court in ***CRM No.M-24651 of 2015 titled as Devender Kumar Sharma @ Dev vs. Gaurav Enterprises decided on 18.12.2015, CRR No.1878 of 2015 titled as Kewal Singh vs. Ripandeep Singh, decided on 29.06.2015, CRM No.M-35141 of 2009 titled as Jiwan Goyal and another vs. Punjab Agro Industries Corporation Ltd. and another, decided on 13.10.2011 and Kedar Nath vs. State of Haryana and another, 2006(4) RCR (Criminal) 582.***

Keeping in view the laid down by the Hon'ble Supreme Court and this Court, I find that the condition imposed by learned Addl. Sessions Judge, Ludhiana, upon the petitioner to deposit ₹25 lakhs in each case, is not as per law.

Therefore, finding merit in all the petitions, the same are allowed. The impugned orders dated 11.08.2017 passed by learned Addl. Sessions Judge, Ludhiana, in aforesaid cases are set aside to the extent of imposing condition of depositing of ₹25 lakhs i.e. 1/4th of the compensation amount in each case. The petitioner is directed to appear before learned trial

Court/Duty Magistrate is directed to suspend the sentence and admit him on bail on furnishing bail/surety bonds for a sum of ₹75,000/- in each case to its satisfaction.

October 26, 2017	(INDERJIT SINGH)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No