

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

CRM-M No.32069 of 2017

Date of decision: 27th September, 2017

Satish Gulati

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. H.S. Batth, Advocate for the petitioner.

Mr. Sandeep Kumar, Dy. Advocate General, Punjab
for respondent No.1/State.

Mr. J.S. Brar, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

Through this petition under Section 482 Cr.P.C. petitioner Satish Gulati has sought setting aside of order dated 20.04.2017 (Annexure P4) passed by the Court of learned ACJM, Sri Muktsar Sahib and subsequent orders dated 15.06.2017 (Annexure P5) of the Court of learned Additional Sessions Judge, Sri Muktsar Sahib passed in the revision petition of the petitioner regarding release of his original passport.

Upon hearing learned counsel for the petitioner Mr. H.S. Batth, Advocate; Mr. Sandeep Kumar, Dy. Advocate General, Punjab on behalf of the State/respondent No.1 and Mr. J.S. Brar, Advocate representing respondent No.2.

The brief facts are that complainant Gurdev Singh Rupana claiming himself to be a famous Punjabi writer filed a complaint against accused Chetna Parkashan Punjab Bhawan Ludhiana through its proprietor present petitioner Satish Gulati on the allegations that the accused had represented the complainant to publish novels so written by him and undertook to pay 15% of the royalty along with Rs.50,000/- in advance, regarding which an agreement was also got executed. Subsequently, the complainant claims that he became dissatisfied and had a change of heart and a dispute over publishing of his works and their sale abroad ran into rough weather and no such written consent as claimed by the complainant was given to enable the accused to publish his works and thus, on their own had gone ahead with the publication of his works leading to filing of complaint on the basis of fraud and it is subsequent thereto, upon examination of the preliminary evidence the petitioner was summoned under Sections 18/51/63 of the Copyright Act and it was thereafter an application under Section 438 Cr.P.C. for anticipatory bail was moved before the learned Additional Sessions Judge, Sri Muktsar Sahib and vide orders dated 04.10.2016 the same was allowed however, a rider was placed to the following effect:

“... .. Accordingly, accused-applicant is directed to deposit the passport for three months before the learned trial Court, as the respondent-complainant has apprehension of fleeing by accused-applicant from justice. However, if the learned trial Court has failed to conclude the trial within a period of three months due to non-

availability of evidence or as per convenience of that very Court due to pendency of other work, then the passport of accused-applicant would be returned to him after obtaining proper surety or guarantee to the satisfaction of that very learned trial Court... ..”

It is during the course of trial, through judgment dated 09.01.2017 the Court of learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib acquitted the accused thereby dismissing the complaint of the complainant. It was subsequent thereto, an application dated 28.02.2017 was moved for return of passport of the accused and it is through orders dated 20.04.2017 the Court of learned ACJM, Sri Muktsar Sahib dismissed the application holding that since the appeal is pending before the Hon’ble High Court, no justifiable ground was there for return of the passport and subsequently, the revision petition preferred by the present petitioner before the learned Additional Sessions Judge too stood declined vide orders dated 15.06.2017 and that is how the petitioner has come up before this Court.

Appreciating the submissions of the two sides and perusal of the records, it is by no means differed by the counsel representing the two sides that the judgment dated 09.01.2017 thereby acquitting the petitioner as on date has not been set aside, revoked or modified and still holds good. The learned State counsel or learned counsel for the complainant/respondent No.2 could not in any manner bear out if there has been ever misuse of the concession of anticipatory bail so granted to the petitioner,

who since then has been acquitted of the charges so levelled against him and thus, stands fully exonerated of the allegations of the complainant. Since the right of the petitioner to free movement within and outside the country is an inherent right that vests with him by virtue of Article 21 of the Constitution of India and the fact that as on date there is no palpable and tangible apprehension of misuse of the process of Court by the petitioner. By preventing him from enjoyment of his life and personal liberty would certainly be gravest of the injustices that can be heaped upon a person who stands acquitted of the allegations. The impugned orders rather reflect that there has been a mere misconceived apprehension of the Courts below merely because of the reason that appeal against acquittal is pending before this Court, does not justify the order in any manner. A person cannot be denied a relief merely on hyper-technicalities as it is not the purpose of administration of justice and the law should be so liberal and compassionate so as to bring about equality of a person before law and thus, to strike a balance and interests of justice, the impugned orders of both the Courts below certainly are not only erroneous in their approach but illegal in their findings and needs to be set aside by way of exercise of inherent powers under Section 482 Cr.P.C. In view of the exceptional circumstances which have come before this Court and thereby the instant petition stands allowed. Necessary directions are issued to the courts below to release passport of the petitioner immediately without loss of time and if so necessitated may

take an undertaking that the petitioner would abide by the conditions, if any, subsequently imposed by a competent Court of law.

(FATEH DEEP SINGH)
JUDGE

September 27, 2017
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No