

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

CRM No.M-40618 of 2016 (O&M)

Date of Decision: March 06, 2017

Raj Singh

...Petitioner

VERSUS

Raj Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.P.S.Duggal, Advocate
for the petitioner.

Mr.S.P.S.Sidhu, Advocate
for respondent No.1.

Mr.Deep Singh, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 439(2) Cr.P.C. for setting aside the order dated 02.11.2016 passed by the trial Court in case FIR No.84 dated 10.07.2015 under Sections 420, 467, 468, 471 and 120-B IPC registered at Police Station Jalalabad, District Fazilka and to cancel the bail of respondent No.1.

Notice of motion was issued. Learned counsel for respondent No.1 appeared and contested the petition. Learned State counsel also appeared.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

The only disputed point in the present case is that Raj Kumar respondent No.1 applied for anticipatory bail before this Court vide CRM No.M-29556 of 2015, which was dismissed by this Court vide order dated 06.10.2015. After this order, the accused-respondent No.1 again applied for anticipatory bail before learned Addl. Sessions Judge, Fazilka, without informing the Court that his bail application has already been dismissed by this Court vide order dated 06.10.2015. The petitioner has placed on record the copy of the bail application Annexure P-5, in which in para No.9, the applicant-accused has simply stated that this is second bail application of its kind in the changed circumstances and no such application is at present pending in any higher court of law of India. In the head note of this application also, it is written that it is second application under Section 438 Cr.P.C. Learned Addl. Sessions Judge, Fazilka, vide order dated 02.11.2016 allowed the application.

In my view, this Court need not to discuss the merits of the case. The only point for determination before this Court is whether non-mentioning of the order passed by this Court rejecting the bail application, amounts to material concealment or not. The perusal of the record shows that it is admitted fact that respondent No.1-accused earlier filed application before the Court of Session, which was dismissed and then he approached this Court and again he filed the application before Court of Session, which means that it was third application but he has stated it as second application. This fact shows that respondent No.1-accused has concealed the material fact from the Court and by concealing the material fact, he obtained the order of anticipatory bail from learned Addl. Sessions Judge, Fazilka after the dismissal of the bail application by this Court.

Learned counsel for the petitioner relied upon the law laid down by the Hon'ble Supreme Court in ***M.C.D. vs. State of Delhi and another, 2005(3) RCR (Criminal) 13***, in which it is held as under:-

“19. This apart, the respondent did not also disclose the fact in the criminal revision filed before the High Court that he has also been convicted in another Criminal Case No. 202 of 1997 by the Court of Metropolitan Magistrate, Patiala House, New Delhi. Thus, the contesting respondent has come to the High Court with unclean hands and withholds a vital document in order to gain advantage on the other side. In our opinion, he would be guilty of playing fraud on the Court as well as on the opposite party. A person whose case is based in falsehood can be summarily thrown out at any stage of the litigation. We have no hesitation to say that a person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of the litigation. In the instant case, non-production of the order and even non-mentioning of the conviction and sentence in the criminal Case No. 202 of 1997 tantamounts to playing fraud on the Court. A litigant who approaches the Court is bound to produce all documents which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well on the opposite party. The second respondent, in our opinion, was not justified in suppressing the material fact that he was convicted by the Magistrate on an earlier occasion. Since the second respondent deliberately suppressed the crucial and important fact, we disapprove strongly and particularly, the conduct of the second respondent and by reason of such conduct, the second respondent disentitled himself from getting any relief or assistance from this Court. We, however, part with this case with heavy heart expressing our strong disapproval of the conduct and behaviour but direct that the second respondent to pay a sum of Rs. 10,000 by way of cost to the appellants herein.”

The above-cited law cited by learned counsel for the petitioner fully applies in the present case. Respondent No.1-accused obtained the order of anticipatory bail by concealing the material fact from the Court. He suppressed the material fact that his anticipatory bail has been dismissed by this Court.

In view of the above fact, the order dated 02.11.2016 passed by learned Addl. Sessions Judge, Fazilka is set aside and anticipatory bail granted to respondent No.1-accused is cancelled.

Therefore, finding merit in the present petition, the same is allowed. A copy of this order be sent to the learned trial Court for necessary action.

March 06, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No