

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Misc. No. M-43787 of 2016 (O&M)

Date of decision : May 08, 2017

Kamaljit Singh

..... Petitioner

VERSUS

State of Punjab & ors.

..... Respondents

CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI

PRESENT: Mr. P.S. Dhaliwal, Advocate, for the petitioner.
Mr. Abhishek Chautala, Assistant Advocate General,
Punjab.
Mr. Sumit Jain, Advocate, for respondent No.5.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

Per A.B. Chaudhari, J.

This is a petition by petitioner-Kamaljit Singh for cancellation of regular bail order dated 05.08.2016 made by this Court in CRM M-8338 of 2016, granting regular bail to respondent No.5-Ravinder Singh alias Binda, and for directions to extend protection to the petitioner.

In support of the petition, learned counsel for the petitioner-complainant submitted that in breach of the conditions imposed by this Court while granting regular bail to respondent No.5, he violated all the conditions and entered District Moga

with the help of the local police station officers. According to him, a police station officer also boarded the luxury car of respondent No.5 and was seen moving in the area. He has annexed the photographs with the petition about the presence of respondent No.5 in Moga along with the police officials and, in particular, in Kabaddi tournament. Learned counsel for the petitioner contended that on 30.08.2016 i.e. immediately after he was released on bail by this Court, respondent No.5 was seen violating the conditions imposed in the bail order by residing in Village Kokri Vehniwal and moving in the area where he was prohibited from entering. Learned counsel for the petitioner, then, stated that respondent No.5 had revolver, rifle and other dangerous weapons and issued threats to the people through mobile phone, etc. He has a number of cases registered against him in various police stations. Learned counsel for the petitioner, therefore, submitted that there was sufficient evidence on record to show that respondent No.5 violated the conditions imposed by this Court.

Not only that, according to the State counsel also, FIR No. 8 under Sections 308/341, etc. Indian Penal Code, has been registered against respondent No.5 on 25.01.2017 at Police Station, Mehna, District Moga, as respondent No.5 is stated to have assaulted a person and, thus, he has committed offence while on bail. He, therefore, prayed for cancellation of order granting regular bail to respondent No.5, for violation of the conditions imposed in the order.

Per contra, learned counsel for respondent No.5 submitted that respondent No.5 had gone to the Civil Courts at Moga in a civil case pending in that Court along with his father and, therefore, it could not be said that there was any violation of any condition by him. He, then, submitted that the present petition does not relate to the alleged incident dated 25.01.2017 in FIR No.8. According to him, he has produced on record evidence to show that on 25.01.2017, respondent No.5 was in the Supreme Court premises, as is clear from the Gate Pass and, therefore, that was a false FIR lodged against respondent No.5. According to him, even the complaint dated 30.08.2016 (Annexure P-4) lodged by the petitioner has been found to be false by the police. There is a dispute over the land between the petitioner and respondent No.5 and the petitioner is, therefore, harassing respondent No.5. He, therefore, prayed for rejection of the petition for cancellation of bail.

I have heard learned rival counsel for the parties at length.

During the pendency of this petition, it was pointed out to this Court by the learned State counsel that FIR No.8 dated 25.01.2017 under Sections 308/341, etc. Indian Penal Code, was registered against respondent No.5 at Police Station, Mehna, District Moga, as he is stated to have assaulted the complainant in the said FIR. It is not in dispute that there are number of cases against respondent No.5 in the police stations in Districts of Moga and Ludhiana. However, for the purpose of

the present petition, it would not be proper to address on FIR No.8 dated 25.01.2017 since that is a subsequent event and, at any rate, the document produced by respondent No.5; namely, Gate Pass, shows the photograph and name of the petitioner making entry in the Supreme Court premises on 25.01.2017, thereby raising a suspicion about respondent No.5 entering Village Mehna and committing the alleged offence.

An important contention has been raised by the learned counsel for the petitioner about the violation of condition imposed on respondent No.5 not to enter Districts of Moga and Ludhiana, except on the dates of appearance before the concerned Court. The photographs filed with the petition as Annexure P-3, collectively, have not been disputed by respondent No.5, so also the averments connected therewith. The order dated 05.08.2016 made by this Court granting bail to the petitioner reads, thus:-

“Heard learned counsel for the rival parties.

In FIR No.38 dated 01.05.2015, under Sections 379, 447, 511, 506, 148, 149 of Indian Penal Code, 1860 and Section 3(1)(iv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Mehna, District Moga, petitioner was arrested and is in jail since then.

There is a detailed affidavit filed by Gurmail Singh, PPS, Deputy Superintendent of Police, Sub Division Dharamkot, District Moga wherein it is clearly pointed out that the petitioner is facing large number of prosecution at the same time and the subject matter of the present FIR.

Learned State counsel states that area of operation of

the petitioner has been found to be the District Moga and District Ludhiana. Learned counsel for the complainant vehemently opposed the petition for bail on the ground that the petitioner is likely to tamper with the prosecution evidence and also threatens the prosecution witnesses including the complainant and he submits that atleast the evidence of the complainant should be recorded before the petitioner is allowed bail.

In that view of the matter, since the challan has been filed and the offence is triable by Special Court in view of the offence under SC/ST Act, in my opinion, in that view of the matter, the petitioner can be allowed the relief of bail. However, care will have to be taken for the interest of the prosecution and its witnesses, in view of the threat perception as explained by the learned counsel for the complainant as also learned State counsel.

In that view of the matter, learned counsel for the petitioner makes a statement that the petitioner would not enter the Districts of Moga and Ludhiana except on the date of appearances before the concerned Court and if petitioner found within the Districts of Moga and Ludhiana, he shall be arrested by the police. Statement is accepted. Learned counsel for the petitioner also makes a statement that the petitioner shall not apply for modification of this condition. Statement is again accepted.

In that view of the matter, this petition is allowed. Petitioner be released on bail subject to the satisfaction of the learned trial Court, with further clarification that in case, he found to be indulged in any other offence, State will be at liberty to apply for cancellation of bail. Petitioner would not enter the Districts of Moga and Ludhiana except on the date of appearances before the concerned Court and if he found within the Districts of Moga and Ludhiana, he shall be

arrested by the police. Petitioner shall not apply for modification of this condition.”

It is clear from the above order that respondent No.5 has been facing a large number of cases and contention of the State counsel that his area of operation has been found to be in Districts of Moga and Ludhiana was recorded by this Court. The present petitioner had also expressed threat perception and this is also recorded by this Court. It is in this background this Court incorporated the condition that respondent No.5 would not enter the Districts of Moga and Ludhiana. Respondent No.5 has filed an affidavit dated 27.02.2017 in reply to this petition and in the affidavit, he has referred to his presence in the Supreme Court premises and has filed the copy of the Gate Pass on record. In para-5 of the affidavit, he has also referred to the alleged threat from Senior Superintendent of Police, Moga that he would be arrested in a fresh case. On record, there is a certified copy of zimny order dated 14.09.2016 made by Shri G.S. Johal, Civil Judge (Junior Division), Moga, in Civil Suit (RT 134/23.04.2014/16.05.2016) titled Kamaljit Singh vs. Ravinder Singh and another, which reads, thus:-

“Production warrants of defendant Ravinder Singh not issued by the Ahlmad. He is warned to be careful in future. Same be issued for 28.09.2016.”

The averments in paragraphs 4 and 5 of the petition have not been traversed. I quote paragraphs 4 and 5 of the petition, which read, thus:-

“4. That it is pertinent to mention here that the above

mentioned accused is openly violating the order dated 05.08.2016 passed by this Hon'ble Court as the above mentioned accused person is openly roaming in District Moga that too in the presence of the S.H.O., Police Station Dharamkot, District Moga namely Satwinder Singh Inspector i.e. respondent No.3 and A.S.I. Chowki Incharge Kishanpura, District Moga, namely Raj Singh i.e. respondent No.4. For the kind perusal of this Hon'ble Court, few of the photographs depicting the presence of above mentioned accused attending the function at District Moga alongwith the above police officers i.e. respondent No.3 and 4 are annexed as Annexure P-3.

5. That it is pertinent to mention here that the above mentioned accused is a dreadful gangster and habitual offender as numbers of F.I.Rs. are pending against him and he is having High Political links in the ruling party of Akali Dal BJP Alliance in Punjab.”

Upon having a look at the photographs (Annexure P-3) and the aforesaid averments, it is clear and this Court finds it unfathomable that the police officer-S.H.O. is sitting on the front seat along with respondent No.5 in his luxury car and has, thus, shown his close friendship with respondent No.5. It is disturbing to note that the police officer is openly demonstrating friendship with a person facing a number of criminal prosecutions against him. The public at large is bound to feel that police officer-S.H.O. and the accused work gung-ho and have an inseparable combination. The victims and the witnesses are bound to get tormented upon seeing such a unholy nexus. It is a common experience that police personnel in order to avoid use of public transport board the vehicles of the accused persons which is

bound to put fear in the mind of victims, witnesses and the common people. A police officer or a police personnel must be prevented from engaging in friendship with criminals. Photographs (Annexure P-3) clearly show that the concerned police officer is sitting in the luxury car of respondent No.5. Not only that, he is moving with him in the place where Kabaddi tournament was being held. The photographs show the police officer moving along with respondent No.5 as if the police officer is acting as a security guard for respondent No.5. In my opinion, the Director General of Police, Punjab, ought to take urgent and effective steps to curb this activity of the police personnel in becoming friends of the accused persons. Let the report be submitted on 11.05.2017.

After having found the presence of police officer with respondent No.5, this Court made the following order dated 20.12.2016:-

“Reply by way of affidavit of Senior Superintendent of Police, Moga, District Moga filed by the learned State counsel, today in Court, is taken on record.

Learned State counsel to file affidavit as to the police officer sitting in the Car of respondent No.5 and take action against the said police officer.

List again on 16.01.2017.

Respondent No.5 is put on notice that, if he breaches the order granting him the bail, this Court would consider cancellation of his bail, on the next date of hearing.”

Pursuant to the aforesaid order, there is an affidavit dated 13.01.2017 filed on record that necessary action would be

taken against the concerned police officer and an Inquiry Officer has been appointed by Shri Gurpreet Singh Toor, IPS, Senior Superintendent of Police, Moga.

Thus, the discussion made above leads me to hold that respondent No.5 had entered Moga in violation of the conditions imposed by this Court. During the course of arguments, learned counsel for respondent No.5 submitted that respondent No.5 had gone to attend the proceedings in the civil suit in the Civil Court along with his father and, therefore, there is no violation of any condition imposed by this Court. However, I find that there is no evidence, much less satisfactory evidence, produced by respondent No.5. On the contrary, the zimny order dated 28.09.2016 shows otherwise. Even if the said contention is considered, nothing prevented respondent No.5 from approaching this Court for permission to attend the civil court. The word 'concerned Court' used in the regular bail order related to the FIR case as the accused is initially supposed to appear before the Magistrate till the committal of the case to the Sessions Court. At any rate, I find that respondent No.5 could not prove that he had gone himself along with his father to attend any civil court and even his affidavit before this Court is silent on that aspect. It is not possible to accept the oral argument as evidence in the absence of proper proof thereof.

This Court granted regular bail to respondent No.5 on 05.08.2016 and as stated by the petitioner, he violated the condition by entering Moga immediately thereafter for attending

the Kabaddi tournament along with the police officers. It cannot be said that the concerned police officers accompanying respondent No.5 had no knowledge of the order granting bail and the conditions stated therein. Since respondent No.5 has violated the condition imposed by this Court while granting regular bail, it would be wholly improper to allow him the benefit of regular bail.

In view of the above, the regular bail order granted to respondent No.5 is required to be cancelled.

In the result, I make the following order:-

ORDER:

- i) Criminal Misc. No.M-43787 of 2016 is allowed;
- ii) Regular bail granted to respondent No.5 by order dated 05.08.2016, passed in CRM-M-8338 of 2016, stands cancelled;
- iii) Respondent No.5 is directed to surrender to custody within six weeks.
- iv) A copy of this order be sent to the Director General of Police, State of Punjab; and
- v) List on 11.05.2017, for compliance by the Director General of Police, State of Punjab.

May 08, 2017
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(A.B. CHAUDHARI)
JUDGE