

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12303-2018 (O&M)
Date of Decision: April 02, 2018

Varinder Singh @ Raja

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.H.K.Chaturvedi and Mr.R.K.Thakur, Advocates
for the petitioner.

Ms.Manjri Nehru Kaul, Addl.AG, Punjab.
Mr.Aditya Sanghi, Advocate for UOI.

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SURYA KANT, J.

In this second petition filed under Section 439 Cr.P.C. read with Section 45 of the Prevention of Money Laundering Act, 2002 (for brevity,'the 2002 Act'), the petitioner seeks his enlargement on bail in the case registered by Directorate of Enforcement bearing No.ECIR No.02/JLZO/2013 under Section 3/4 of the 2002 Act based upon FIR No.45/2013 dated 03.03.2013 registered under the Narcotics Drugs and Psychotropic Substances Act, 1985 (for brevity,'the NDPS Act') at Police Station Fatehgarh Sahib.

[2] The facts may be noticed briefly. FIR No.45 dated 03.03.2013

has been registered by Punjab Police under the NDPS Act read with the

provisions of Indian Penal Code and Arms Act at Police Station Fatehgarh Sahib and as per allegations contained therein, huge amount of contraband, Indian and Foreign currency was recovered from the suspects and they were found involved in a chain of offences.

[3] In continuation of the above-stated FIR, FIR No.50 dated 03.04.2013 was registered at Police station Urban Estate, Patiala under the NDPS Act, followed by another FIR No.241 dated 08.12.2013 registered at Police Station Sadar, Patiala. The petitioner was also named in both these cases and was arrested under the NDPS Act. This Court released the petitioner on bail in FIR No.241 dated 08.12.2013 vide order dated 06.10.2014. In FIR No.50 dated 03.04.2013, he was released on bail vide order dated 08.01.2015.

[4] Meanwhile, the Directorate of Enforcement registered the case in hand and the petitioner was taken into custody by the said Directorate through production warrant on 08.01.2015.

[5] The petitioner then approached this Court through CRM-M-20171 of 2015 seeking his release on bail in the case registered by Enforcement Directorate under the 2002 Act. His petition was allowed vide order dated August 05, 2015 and the petitioner was ordered to be released on bail subject to his furnishing heavy surety to the satisfaction of the Special Court.

[6] The Union of India/Enforcement Directorate challenged the order of this Court in Crl.A.No.1223 of 2017 (**Union of India vs Varinder Singh @ Raja and another**) (Annexure P4), which was allowed by the

Apex Court vide judgment dated July 21, 2017 and the order granting bail

to the petitioner passed by this Court was set aside holding that “without complying with the requirement of Section 45 of the PMLA, the High Court should not have granted the bail”. The Hon'ble Supreme Court further directed that the petitioner be arrested forthwith.

[7] It is not denied that the petitioner filed a review petition which was dismissed by the Hon'ble Supreme Court on 17.08.2017. The relentless petitioner then filed Curative Petition bearing (Crl.) No.82/2017 which was also dismissed by Hon'ble Supreme Court on 07.03.2018 in following terms:-

“We have gone through the Curative Petition and the connected papers. In our opinion, no case is made out within the parameters indicated in the decision of this Court in the case of **Rupa Ashok Hurra vs Ashok Hurra and anr**, reported in (2002) 4 SCC 388. Hence, the Curative Petition is dismissed.”

[8] The petitioner has now filed this second regular bail application alongwith an application for grant of interim bail primarily on the strength of decision of the Hon'ble Supreme Court in **Nikesh Tarachand Shah vs Union of India and another**, (Writ Petition (Criminal) No.67 of 2017) decided on 23.11.2017 whereby the Apex Court has struck down Section 45 of the 2002 Act declaring it unconstitutional and violative of Articles 14 and 21 of the Constitution.

[9] It is urged on behalf of the petitioner that since the very basis on which the Hon'ble Supreme Court set aside the bail order passed by this Court has become non-existent as Section 45 of the 2002 Act, the non-compliance whereof was the root cause of denial of bail, has been struck

down, there is no legal impediment for not granting him bail. The prayer on the other hand is opposed by counsel for the Directorate of Enforcement.

[10] We have given our thoughtful consideration to the rival submissions and are of the view that in the light of dismissal of the curative petition filed by the petitioner in which he specifically relied upon the recent decision of the Hon'ble Supreme Court in **Nikesh Tarachand Shah's** case (supra) coupled with a positive direction issued by the Supreme Court in its order dated July 21, 2017 that the petitioner be 'arrested forthwith', no case to grant interim or regular bail without first surrendering before the Court of Competent jurisdiction, is made out. The prayer is accordingly declined. However, in case the petitioner surrenders before the Special Court and thereafter applies for regular bail, let the said Court consider his prayer uninfluenced of the observations made hereinabove, and decide the same keeping in view the judgment of the Apex Court in **Nikesh Tarachand Shah's** case (supra) and further make an endeavour to decide the bail application within one week of its submission.

(SURYA KANT)
JUDGE

April 02, 2018
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(SHEKHER DHAWAN)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |