

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12176 of 2017
Date of Decision: 30.08.2018

Mahesh Sharma

....Petitioner

Versus

State of Haryana and anr.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Alok Mittal, Advocate, for the petitioner.

Mr. Vikramjit Singh, Addl.AG, Punjab.

Mr. Yashveer Kharb, Advocate, for
Mr. Jiten Yadav, Advocate, respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Prayer in the instant petition under Section 439(2) Cr.P.C read with Section 482 Cr.P.C. has been made by the complainant for cancellation of bail of respondent No.2, namely Rakesh Singh while setting aside order dated 27.03.2017 passed by learned Additional Sessions Judge, Faridabad, whereby application of the petitioner making similar prayer was rejected.

Briefly, on the complaint of the petitioner, respondent No.2 was booked under Section 406/420/506 IPC vide FIR No.456, dated 30.06.2016(Annexure P-1) registered at Police Station Sector 7, Faridabad. Resultantly, respondent No.2 was arrested. It is pertinent to mention that right from the day one, after registration of FIR, respondent No.2 kept on moving successive applications for his anticipatory or regular bail, but did not succeed as all were rejected. Compromise (Annexure P-7) was reduced into writing between the petitioner and respondent No.2 after coming out of his jail on the next very day. On the basis of compromise, he moved 3rd

application for his regular bail, which was allowed vide order dated

08.11.2016(Annexure P-9), on raising no objection by the petitioner, on the ground that bail of respondent No.2 was necessary to make arrangement of money agreed to be paid by him to the petitioner, pursuant to the aforesaid compromise.

Consequently, a compromise took place between the petitioner and respondent No.2, whereby respondent No.2 agreed to pay a sum of Rs.1.15 crores to the petitioner. Pursuant thereto, respondent No.2 paid Rs.10.00 lakh in cash to the petitioner. For the remaining amount, respondent No.2 gave four post dated cheques, out of which three cheques were of Rs.25.00 lakh each and the 4th one for Rs.30.00 lakh. According to the compromise, when the cheques issued by respondent No.2 were presented to the bank, they were dishonoured on account of stoppage of payment by the drawer i.e. respondent No.2 or for the reason of having not sufficient funds in his bank account. Respondent No.2 also did not adhere to the terms and conditions of the compromise arrived at between him and the petitioner during the last two years.

Resultantly, the petitioner moved a similar application dated 20.02.2017 (Annexure P-1) for cancellation of bail of respondent No.2 before the learned Additional Sessions Judge, Faridabad, who has granted bail to respondent No.2. But the same was dismissed and for that reason, the petitioner is now before this Court.

Learned counsel for the petitioner *inter alia* contends that payment by respondent No.2 as per compromise (Annexure P-7) was a condition precedent for grant of bail to him, which he did not pay. That apart, bail was granted to respondent No.2 on his request to make arrangement of money agreed to be paid by him to the petitioner. Since

compromise, therefore, his bail is liable to be cancelled.

On the other hand, learned counsel for respondent No.2, vehemently opposing the above submissions of learned counsel for the petitioner, contends that after grant of regular bail to respondent No.2 vide order dated 08.11.2016 (Annexure P-9), during trial, on one date respondent No.2 could not appear on account of his ill health. Therefore, he moved application for grant of exemption for his personal appearance, which was rejected by the trial Court and he was taken in custody on 10.04.2017. Thereafter, respondent No.2 approached this Court vide CRM-M-17714-2017 for grant of regular bail to him. Vide order dated 26.05.2017, he was granted bail. Therefore, the earlier order granting regular bail to respondent No.2 on 08.11.2016 had ceased to exist. Now respondent No.2 is on regular bail, pursuant to order dated 26.05.2017, which has not been challenged in the instant petition by the petitioner. Therefore, regular bail of respondent No.2 cannot be cancelled unless and until order dated 26.05.2017 is set aside.

At the threshold of argument, when this Court asked learned counsel for respondent No.2 as to whether respondent No.2 is ready to pay the remaining amount of Rs.1.05 crores even today to the petitioner, for which he had no answer nor was he ready to make any promise on behalf of respondent No.2. Therefore, it is evident on the record that respondent No.2 is out and out to violate the terms and conditions of compromise, either on one pretext or the other. For ready reference, relevant observations of order dated 08.11.2016 are reproduced as under:-

“3. It has been urged by ld. counsel for applicant/accused that this is third bail application moved by applicant/accused. The first bail application was dismissed on merits and

the second bail application was dismissed as withdrawn. Ld. counsel has argued that now the circumstances have been changed and parties have entered into compromise and a sum of Rs.10 lakh has already been received by complainant in cash. Ld. counsel has argued that the applicant/accused is no longer required for the purpose of investigation, interrogation or recovery and in view of compromise between the parties, he has to arrange money for paying the remaining amount to the complainant. Ld. counsel has argued that since the trial is likely to take long time, he be granted the concession of regular bail.

4. On the other hand, ld. PP for State has expressed ignorance about any compromise between the parties but ld. counsel for complainant has acknowledged the fact that the matter has been compromised between the parties.

5. Admittedly, the applicant/accused is no longer required for the purpose of investigation, interrogation or recovery keeping the above facts in view and since ld. counsel for complainant has admitted that parties have compromised the matter, the bail application moved by applicant/accused is hereby allowed. The applicant/accused is ordered to be released on bail to the satisfaction of learned Illaqa/Duty Magistrate, Faridabad. Copy of this order be sent there. The applicant/accused shall be bound by the conditions laid down in Section 437 Cr.P.C. File be consigned to record room after due compliance.”

From the above quoted order, it is crystal clear that making

condition precedent for grant of regular bail to him. Admittedly, as on date, respondent No.2 has not paid balance agreement amount of Rs.1.05 crores, pursuant to the compromise (Annexure P-7). Even four cheques issued by him were also dishonoured. Undisputedely, respondent No.2, did not fulfil his obligation, on the basis of, which he had come out of jail.

Therefore, in the considered opinion of this Court aforesaid, order dated 08.01.2016 is required to be recalled.

As far as argument of respondent No.2 that bail of respondent No.2 cannot be cancelled until and unless order dated 26.05.2017 granting regular bail to him is challenged, has no force in view of the fact that in CRM-M-17714-2017, main issue before this Court only for consideration was as to whether order dated 15.03.2017 rejecting exemption application of respondent No.2 was liable to be set aside, in view of the facts brought by respondent No.2 before the trial Court qua his eye ailment.

Considering this aspect of the matter, this Court set aside order dated 15.03.2017 and accepting exemption application of respondent No.2 granted regular bail to him. Meaning thereby that initial order dated 08.11.2016 granting regular bail to the petitioner in view of the compromise between the parties was restored.

In view of the discussion made above, since respondent No.2 has not fulfilled the condition for grant of regular bail to him, therefore, order dated 08.11.2016 granting regular bail to respondent No.2 is set aside. Trial Court is directed to take respondent No.2 in custody.

Disposed of accordingly.

30.08.2018
monika

Whether speaking/reasoned
Whether Reportable

(RAMENDRA JAIN)
JUDGE

Yes/No
Yes/No