

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34068-2017
Date of Decision: 21.05.2018

Pritam Singh ...Petitioner

V/S

Paramjit Kaur ..Respondent

CRM-M-34075-2017

Pritam Singh ...Petitioner

V/S

Ashwan Sethi @ Ashwani and another ..Respondents

CRM-M-34078-2017

Pritam Singh ...Petitioner

V/S

Kiran Bala and others ..Respondents

CRM-M-34122-2017

Pritam Singh ...Petitioner

V/S

Mela Ram and another ..Respondents

CRM-M-34127-2017

Pritam Singh ...Petitioner

V/S

Sham Lal and others ..Respondents

CRM-M-34452-2017

Pritam Singh ...Petitioner

V/S

Anjna and another ..Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Navjot Singh, Advocate
for the petitioner(s).

Mr. K.B.Raheja, Advocate
for the respondent(s).

ARVIND SINGH SANGWAN,J.

Prayer in these petitions is for setting aside the orders dated 25.05.2017, 26.05.2017, 02.06.2017, 22.05.2017, 24.05.2017 and 24.05.2017 (Annexure P1 in all the petitions) passed by the trial Court granting concession of regular bail to the private respondent(s) in a complaint case No. 54 dated 12.10.2012 (Annexure P3), on the ground that the trial Court, while granting regular bail to the respondent(s), has not followed the proper procedure prescribed under Section 437 (1) (ii) of Cr.P.C. and with a further prayer to set aside the order dated 16.08.2017 (Annexure P2) vide which the revision filed by the petitioner(s) was dismissed.

Brief facts of the case are that the petitioner(s) has filed a criminal complaint under Sections 397/307/325/324/323/452/148 and 149 IPC against the respondent(s)/accused persons and after the trial Court, passed the summoning order against the petitioner(s) under Sections 323/324/325/452/148 and 149 IPC, the respondent(s)/accused, through their respective counsels, appeared before the trial Court on different dates, which are reflected in (Annexure P1) in all the petitions and the trial Court has released them on bail by accepting their bail/surety bonds without issuing notice to the petitioner/complainant. The petitioner(s), thereafter, filed separate revision petition(s) before the Additional Sessions Judge,

Sangrur, challenging the order of the trial Court on the ground that the same have been passed without reference to Section 437 (1) (ii) of Cr.P.C. The Revisional Court, vide its separate judgments dated 16.08.2017, dismissed the revision petition.

The petitioner(s) has filed the abovesaid six petitions challenging the impugned orders passed by the trial Court as well as by the Revisional Court which are arising out of the same complaint filed by the petitioner(s).

Counsel for the petitioner(s) has submitted that the offence under Sections 452 and 325 IPC are punishable for the imprisonment of 07 years and, thereafter, as per the proviso to Section 437 (1) (ii) of Cr.P.C., the trial Court, while granting regular bail to the respondent(s)/accused, ought to have given a notice to the petitioner(s)/complainant and without following such procedure, an illegal order has been passed.

Counsel for the petitioner(s) has relied upon the judgment of Hon'ble Supreme Court titled as **Neeru Yadav vs. State of U.P. and another, 2015 (4) RCR (Criminal) 545**, to submit that it has been held by Hon'ble Supreme Court that while granting bail by the trial Court in exercise of power under Section 439 (2) Cr.P.C., should follow the proper procedure under Section 437 (1) (ii) of Cr.P.C. and in violation of the same, the impugned orders granting bail by the trial Court are liable to be set aside.

Counsel for the petitioner(s) has further submitted that the impugned orders passed by the Court below, be set aside and the matter be remanded back to the trial Court for passing a fresh order on the application for bail filed by respondent(s)/accused.

In reply, counsel for the respondent(s) has submitted that it is the case of filing of a criminal complaint and as per the provision of Section 437 (1) (ii) of Cr.P.C., notice is required to be given only to the Public Prosecutor and not to the complainant. It is further submitted that as per third *proviso*, notice is required to be given to the Public Prosecutor and neither any revision has been filed by the Public Prosecutor before the Court of Sessions nor the impugned orders are challenged before this Court and, therefore, the present petition(s) is not maintainable.

Counsel for the respondent(s) has further argued that the revisional Court, though, has held that the revision filed by the petitioner(s) was not maintainable, however, treating the same to be an application for cancellation of bail, the Revisional Court has passed the detailed judgment by holding that the petitioner(s) has failed to show any ground that the bail granted to the respondent(s)/accused be cancelled. It is further submitted that since the petitioner(s) is praying for cancellation of bail, the petitioner has not shown any such circumstance which may lead this Court to cancel the bail already granted to the respondent(s)/accused.

In reply, counsel for the petitioner(s), has submitted that liberty be granted to the petitioner(s) to appear before the trial Court and make submissions with regard to his right to oppose the prayer for bail before passing the order.

After hearing counsel for the parties I find that it is apparent on the record that the trial Court while granting regular bail to the respondent (s)/accused has not followed the proper procedure under Section 437 (1) (ii) of Cr.P.C. as no notice was issued to the petitioner(s) before granting bail as in all the cases, as and when an application was moved by the

respondent(s)/ accused, the case was taken up even prior to the actual date fixed by the trial Court and bail was granted on same day. Therefore, I uphold the finding recorded by the Revisional Court that the trial Court has not followed the mandatory provision of Section 437 (1) (ii) of Cr.P.C.. However, the petitioner(s) could not made out any case for cancellation of bail granted to the respondent(s) as a perusal of all the petitions filed before this Court shows that it is not pleaded that the respondent(s) have either misused the concession of bail or have extended any threat to the petitioner (s) or his witness as no complaint has been lodged with the police/trial Court in this regard. It is also worth noticing that a period of about 1 years has lapsed, since the time the bail was granted to the respondent(s).

In view of the above, the matter is remanded back to the trial Court with a direction that the orders (Annexure P1) passed in all these petitions be termed as interim bail and after affording an opportunity of hearing to the petitioner(s), the trial Court should pass a fresh order on the applications of bail, in the light of decision of Hon'ble Apex Court in Neeru Yadav'case (Supra).

With the aforesaid modification, all the petitions are disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

21.05.2018
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Whether speaking/reasoned : Yes/No.
Whether Reportable : Yes/No