

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

CRM No.M-7780 of 2018 (O&M)

Date of Decision: August 29, 2018

Sukhdeep Singh

...Petitioner

VERSUS

Raja Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ajay Arora, Advocate
for the petitioner.

Mr.R.P.S.Boparai, Advocate for
Mr.D.S.Virk, Advocate
for respondent No.1.

Mr.B.S.Virk, DAG, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 439(2) Cr.P.C.
for cancellation of bail granted to respondent No.1 in case FIR No.169
dated 21.12.2017 under Sections 285, 307, 506 and Section 25 of the Arms
Act, registered at Police Station Odhan, District Sirsa.

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

I have heard learned counsel for the parties as well as learned
State counsel and have gone through the record.

From the record, I find that as per the allegations in the FIR,

respondent No.1-Raja Singh was armed with pistol and he fired firstly in air and when Hardeep Singh and Sukhdeep singh were talking with each other, then Raja Singh again fired a shot which hit on left shoulder of complainant Sukhdeep Singh.

The perusal of the FIR shows that Raja Singh is the main accused in the FIR under Section 307 IPC etc. and he was armed with deadly weapon and injury with fire arm weapon has been attributed to him. Learned Addl. Sessions Judge, Sirsa, vide order dated 23.01.2018 granted benefit of anticipatory bail to respondent No.1. No cogent reasoning has been given as to why benefit of anticipatory bail was granted to Raja Singh, specially, when he is the main accused and further weapon was to be recovered from him. It is, even, in the impugned order that Sukhdeep Singh has received fire arm injuries. Learned Court below has stated that no opinion regarding nature of injury has been obtained. When the injury has been received by fire arm weapon and Raja Singh has fired from the pistol, then there is no need for asking about nature of injury, which has been caused by fire arm weapon. It is also in the impugned order that there is list of ten cases against the petitioner but Investigating Officer submitted only three cases against the petitioner. This finding further shows that Raja Singh is also involved in other cases. No cogent reasoning has been given as to how Raja Singh was entitled to benefit of anticipatory bail.

Though, learned Court of Session has power to grant anticipatory bail but this discretion is to be used in the facts and circumstances of every case and this is to be used judiciously and not arbitrarily. There is not even a single ground for granting anticipatory bail

to present respondent No.1 but even then, learned Addl. Sessions Judge,

Sirsa has granted benefit of anticipatory bail to him and further in the order, asked accused Raja Singh to seek regular bail within 20 working days of filing of challan against him, if any.

Keeping in view the facts and circumstances of the present case, respondent No.1 being main accused and pistol to be recovered from him, he was not entitled to benefit of anticipatory bail. The impugned order dated 23.01.2018 passed by learned Addl. Sessions Judge, Sirsa, is not as per law and the same is set aside.

Further, from the record, challan was presented and learned Judicial Magistrate Ist Class, Dabwali, in view of the order dated 23.01.2018 passed by learned Addl. Sessions Judge, Sirsa, admitted Raja Singh to regular bail. The Court of learned JMIC, Dabwali, passed the following order:-

“Challan presented before the undersigned. It be checked and registered. Accused Raja @ Gurcharan Singh came present before the court and moved an application for regular bail application. Perusal of the case file shows that the accused persons is already on anticipatory bail vide order dated 23.01.2018 passed by the Court of Shri Manish Kumar, learned Addl. Sessions Judge, Sirsa. Ahlmad concerned has confirmed the said order. This court is of the view that no useful purpose will be served by committing the accused person in custody, hence, accused is hereby admitted to regular bail on furnishing bail bonds in the sum of Rs.50,000/- with one surety in the like amount. Requisite bail bonds furnished. Same are accepted and attested.

Copy of challan supplied to accused free of cost as per requirement of law under Section 207 Cr.P.C. Statement to this effect recorded separately. Now to come up on 3.4.2018 for checking copy of challan.”

The perusal of the above order shows that in the regular bail application, the Court has admitted present respondent No.1 to bail only in view of the order passed by learned Addl. Sessions Judge, Sirsa, granting

anticipatory bail. Otherwise, Judicial Magistrate has no power to grant the regular bail in the case under Section 307 IPC as the offence is punishable with life imprisonment. Furthermore, the order passed by learned JMIC, Dabwali, shows that nowhere the Court has noted down the facts of the case nor bail was granted while hearing the arguments and giving reasoning on merits.

In view of the above discussion, I find merit in the present petition and the same is allowed. As the regular bail was granted to Raja Singh on the basis of order granting anticipatory bail by learned Addl. Sessions Judge, Sirsa, therefore, the order dated 26.03.2018 granting regular bail passed by learned JMIC, Dabwali, is also set aside.

Respondent No.1-Raja Singh is directed to surrender before the trial Court without any delay, otherwise, the Court will take him into custody, as per law. Respondent No.1-Raja Singh is further directed to seek regular bail and concerned Court will decide that application for regular bail on merits, without being influenced with the findings given above.

However, nothing stated above, in any way, shall constitute my opinion on merits of the case.

August 29, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No