

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

CRR-2770-2018 (O&M)

Date of Decision:-23.8.2018

Makhan Singh and another

... Petitioners

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Ashok Kumar Khunger, Advocate for the petitioners.

GURVINDER SINGH GILL, J.(Oral)

The petitioners, aggrieved by order dated 3.8.2018 passed by learned Additional Sessions Judge, Fazilka, insofar as the same pertains to the condition of deposit of the fine as a pre-condition for release the petitioners on bail, have challenged the same by filing this revision petition.

Notice of motion.

On asking of the Court, Ms. Ruchika Sabherwal, Assistant Advocate General, Punjab, who is present in Court, accepts notice on behalf of the respondent-State.

I have heard the learned counsel for the petitioners and also the learned State counsel.

The learned lower Appellate Court, while suspending the sentence of imprisonment of the appellants, has imposed a pre-condition of depositing the fine amounting to ₹ 2 lacs upon each of the appellants.

The petitioners by filing appeal before Court of Additional Sessions Judge, Fazilka would be availing their statutory right of first appeal

so as to challenge their conviction as recorded by learned Judicial Magistrate 1st Class, Abohar vide order dated 23.7.2018.

Since the appeal has now been adjourned to 16.10.2018 by learned Additional Sessions Judge, Fazilka for the purpose of requisitioning of record only, the disposal of the same thereafter may take some time. In case on account of inability of petitioners to deposit fine of ₹ 2 lac which is a substantial amount, the petitioners have to remain behind bars, the same would amount to virtually defeating their right to bail in terms of Section 389 Cr.P.C.

In the given circumstances, in my opinion, the recovery of fine as imposed upon the petitioners by the trial Court ought to be stayed during the pendency of appeal.

Accordingly, the present revision petition is accepted and the impugned order dated 3.8.2018 passed by learned Additional Sessions Judge, Fazilka is modified to the extent that the condition regarding deposit of fine as a pre-condition for release of the petitioners on bail shall not be insisted upon and the recovery of fine shall remain stayed during the pendency of appeal pending before learned Additional Sessions Judge, Fazilka.

23.8.2018

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No