

Crl. Misc. No. M-18552 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-18552 of 2018

DATE OF DECISION:04.02.2019

Daljit Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. SS Salar, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

Mr. Amit Arora, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

The present petition under Section 439 (2) Cr.P.C. has been filed for cancellation of anticipatory bail granted to respondent No.2 by the Court of Additional Sessions Judge, Tarn Taran vide orders dated 12.1.2017 as well as 13.2.2017 in case FIR No. 424 dated 24.11.2014 registered under Section 406 IPC at Police Station Tarn Taran, District Tarn Taran.

Respondent No.2 filed anticipatory bail application before Additional Sessions Judge, Tarn Taran and vide order dated 12.1.2017, he was admitted to interim bail with the direction to join investigation, which was made absolute on 13.2.2017. Now, the present petition has been filed by the petitioner-complainant for cancellation of anticipatory bail granted to respondent No.2.

Learned counsel for the petitioner contends that order of bail was passed in a casual manner, whereas, serious allegations were there.

Factum of joining investigation was admitted by the investigating officer but it was stated that recovery was not effected. Learned counsel further contends that neither the specific allegations levelled against him nor non-effecting the recovery from accused were taken into consideration and bail was granted.

Learned counsel for respondent No.2 submits that bail was granted by passing a detailed order. In compliance of order dated 12.1.2017 passed by the trial Court, the petitioner joined investigation, also got recovered the weapon and custodial interrogation was not required. By considering all these aspects, the interim order was made absolute. Learned counsel for respondent No.2 further submits that the petitioner should have approached the same Court for cancellation of bail. Learned counsel has also relied upon the judgment of Hon'ble the Apex Court in the case of **Harjeet Singh @ Seeta Vs. State of Punjab** in support of his contentions.

Heard the arguments advanced by learned counsel for the parties and have also gone through the orders dated 12.1.2017 and 17.2.2017 vide which, initially interim bail was granted to respondent No.2 and thereafter it was made absolute.

Admittedly, FIR No. 424 dated 24.11.2014 was registered against respondent No.2 under Section 406 IPC. Respondent No.2 was avoiding arrest and was declared proclaimed offender on 28.11.2015 by Illaqa Magistrate, Tarn Taran. After completion of investigation, final report under Section 173 Cr.P.C. was filed against accused-respondent No.2 on 5.11.2016. Thereafter, he filed anticipatory bail application before Additional Sessions Judge, Tarn Taran and vide order dated 12.1.2017, he was admitted to interim bail and was directed to join investigation.

Thereafter the case came up for hearing on 13.2.2017. On that day, ASI Amarjit Singh appeared through APP and brought to the notice of the Court that respondent No.2 had joined the investigation but no recovery of weapon was effected from him and his custodial interrogation was required. By believing the version of respondent No.2 that he has returned the carbine to the police officials, interim bail granted to him vide order dated 12.1.2017 was made absolute. The relevant portion of order dated 13.2.2017 is reproduced as under:-

"Today ASI Amarjit Singh No. 1350/T.T. has appeared through APP and suffered separate statement that he is I.O. In this case. Accused Bakshish Singh has joined the investigation on 20.1.2017 but he did not got the recovery of weapon effected so his custodial interrogation is required in this case. As per the version of the applicant, he has returned the carbine to the police officials, whereas, the version of the prosecution is that he has not returned carbine. I am of the view that this fact to be proved during trial. In view of the facts and circumstances of the case, order dated 12.1.207 is made absolute and accused/applicant is directed to join investigation as and when required and shall comply provisions of Section 438 (2) Cr.P.C. The file be consigned to the record room."

Status report by way of an affidavit of Senior Superintendent of Police was filed on 21.3.2017, which is annexed as Annexure P-2. In the status report, it has been mentioned that accused-respondent No.2 was avoiding his arrest and was declared proclaimed offender on 28.11.2015 by Illaqa Magistrate, Tarn Taran. Thereafter report under Section 173 Cr.P.C.

against accused was presented before the Illaqa Magistrate on 5.11.2016 being proclaimed offender. Respondent No.2 filed anticipatory bail before Additional Sessions Judge, Tarn Taran and vide order dated 12.1.2017, he was directed to appear before the investigating officer. Respondent No.2 joined investigation but did not produce or got recovered Carbine No. 1093327, which was entrusted to him for his self-defence. ASI Amarjit Singh, investigating officer of the case appeared through APP on 13.2.2017 and brought to the notice of the Court that respondent No.2 had joined the investigation but no recovery of weapon was effected from him and his custodial interrogation was required. In spite of statement made by the Investigating Officer, interim order dated 12.1.2017 passed in favour of respondent No.2 was made absolute.

It is apparent from the affidavit as well as statement of the investigating officer that order of interim bail dated 12.1.2017 was made absolute without taking into consideration the fact that recovery of Carbine was yet to be effected from respondent No.2. Moreover, respondent No.2 was declared proclaimed offender as earlier he was absconding and did not join investigation. Challan was presented at his back. Respondent No.2 was not entitled for anticipatory bail being proclaimed offender.

While granting bail, the lower Court has not taken into consideration the fact that respondent No.2 was already declared proclaimed offender. It has not been mentioned in the order that respondent No.2- Bakhshish Singh was in possession of deadly weapon for which licence was not issued. This fact has not been taken into consideration and respondent No.2 was released on interim bail, which was later on made absolute. It is a case of misuse of a deadly weapon i.e. .30 MI Carbine.

Respondent No.2 was holding the weapon without having any licence. It was specifically stated by the Investigating Officer that respondent No.2 had joined the investigation but recovery of weapon was not effected from him.

Accordingly, the present petition is allowed and orders dated 12.1.2017 and 13.2.2017 passed by Additional Sessions Judge, Tarn Taran granting bail to respondent No.2 are set aside. The police authorities are directed to take respondent No.2 in custody forthwith.

February 04, 2019
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes