

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42523-2018

Date of Decision: 09.09.2019

Gurcharan Singh

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rajiv Kumar Saini, Advocate,
for the petitioner.

Mr. A.P.S. Gill, D.A.G., Punjab.

AMOL RATTAN SINGH, J. (ORAL)

On 05.08.2019, the following order had been passed:-

“Though no report of the Registry is on record, as directed vide the order dated 22.07.2019, the Reader of this Court has put up before me, from the brief of the case, a communication dated 13.05.2019, sent by the Registry to the SSP, Chandigarh, conveying therein the order of this Court of the same date, directing bailable warrants to be issued to secure the presence of respondent no. 2.

As regards non-bailable warrants thereafter ordered to be issued on 22.07.2019, the report of the Registry is to the effect that such warrants have been received back with the report that the house of the said respondent was locked as he does not reside at the given address.

A perusal of the report sent by the learned Chief Judicial Magistrate, SAS Nagar, Mohali, also bears that out.

That being so, with none being present for the parties to assist this Court on the merits of the case, as the

Bar is still abstaining from work, adjourned to 26.08.2019.”

Obviously, non-bailable warrants stood un-executed at that stage.

Today, learned State counsel, on instructions from the police official who is present in Court to assist him, submits that as a matter of fact the report under Section 173 (2) of the Cr.P.C. has been submitted to the competent Court, with the date fixed now for framing of charges being 16.10.2019.

Learned counsel for the petitioner points to the order passed by the learned Additional Sessions Judge, Mohali, on 07.04.2018, admitting respondent no. 2 to anticipatory bail, on a statement made to the effect that Rs. 10,00,000/- as was due to UCO bank, has been paid, whereas according to him, it has not been paid by respondent no. 2.

Today, he has produced in Court an order of the learned Debt Recovery Tribunal, Chandigarh, dated 24.12.2016, in which proceedings in fact respondent no. 2 was impleaded as respondent no. 4, with that forum having found that recoveries were due from respondents no. 1 and 2 therein, jointly and severally.

Obviously therefore, as regards respondent no. 2 Baljinder Singh, nothing was found due from him to the financial institutions concerned, because the loan is stated to have been availed of by Sukhdev Singh, i.e. respondent no. 1 before the aforesaid Tribunal.

Learned counsel for the petitioner further submits that however, the property having been sold to the petitioner by respondent no. 2, who in turn had purchased it from Sukhdev Singh, with respondent no. 2 not having disclosed that the property had been mortgaged to a Bank, he does not deserve the concession of bail.

Upon query as to why, once the report under Section 173 (2) of the

Cr.P.C., has also been submitted to the competent Court, with the said respondent arraigned as an accused therein and with him facing trial, cancellation of bail would be called for at this stage, he submits that since recovery is to be made from him as per the allegation made in the FIR, the bail granted to him deserves to be cancelled.

Learned counsel for the State draws attention to paragraph 3 of the affidavit filed in the accompanying petition, i.e. CRM-M-12665-2018, wherein, in effect, it has been stated that the report has been submitted accordingly to the trial Court, which is now seized of the matter.

That being so, unless any further investigation is ordered by the trial Court, in which custodial interrogation of respondent no. 2 would be necessary, I see no reason as to why the bail granted to him should be cancelled at this stage, when he is already facing trial, and the investigating agency has not stated that he did not join investigation; and further, with the trial Court not having stated at any stage that the bail deserves to be cancelled.

Consequently, this petition is dismissed; but no observation made shall be taken to be one on the merits of the case, for or against respondent no. 2, with the trial Court to proceed wholly on the basis of evidence led, regardless of any observation made hereinabove.

September 09, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes