

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 10.01.2020

1. CRM-M No.43292 of 2019(O&M)

Dharampal

.....Petitioner

Versus

State of Haryana

.....Respondent

2. CRM-M No.43606 of 2019(O&M)

Anil Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

3. CRM-M No.51191 of 2019(O&M)

Sunil Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.K. Panwar, Advocate
for the petitioner in CRM-M No.43292 of 2019.

Ms. Loveleen Dhaliwal, Advocate
for the petitioner in CRM-M No.43606 of 2019.

Mr. Arjun Sheoran, Advocate,
Ms. Aditi Sheoran, Advocate and
Ms. Amrita Garg, Advocate
for the petitioner in CRM-M No.51191 of 2019.

Mr. Surender Singh, AAG, Haryana.

Mr. Samil Malik, Advocate and
Mr. Paritosh Goel, Advocate
for Dakshin Haryana Bijli Vitran Limited.

Mr. Hemant Bassi, Advocate and
Mr. Harmanjeet Singh, Advocate
for the co-accused-Kuldeep Singh.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CRM-M No.43292 of 2019 titled Dharampal Vs. State of Haryana, CRM-M No.43606 of 2019 titled Anil Kumar Vs. State of Haryana and CRM-M No.51191 of 2019 titled Sunil Kumar Vs. State of Haryana are being disposed of. Common facts are being noticed.

[2]. Petitioners in all the three petitions have prayed for regular bail in case bearing FIR No.352 dated 01.10.2018 registered under Sections 420, 467, 468, 471, 120-B, 167, 409 IPC and Sections 8, 9, 13-C of Prevention of Corruption Act at Police Station Civil Line, Jind.

[3]. FIR was registered on the basis of inquiry report submitted by the Inquiry Officer-cum-SE(OP) Circle DHBVN, Jind to the Chief Engineer/OP DHBVN, Hisar vide memo No.Spl.1/TED-260 dated 09.08.2018. The said inquiry was conducted in the context of work carried out by M/s Duhan Electric Works, Hisar against TED-260 under (OP) Circle,

DHBVN, Jind. In the said inquiry report, it was opined that proper procedure was not followed by XEN(OP) Divn., DHBVN, Narwana. Inquiry Officer called the officers/officials concerned for recording their statements and after recording their statements, he found that Jora Singh, AFM verified the bills without physically verifying the material at site. Dharampal, JE verified the bills without physically verifying the material at site and also did not check the inspection and DI's of material. Baljeet Singh, the then HDM (OP) Divn., Narwana did not check the inspection and DI's of material before verifying the bills. Similarly, Anil Kumar, the then Divisional Accountant, Narwana also did not check the inspection and DI's before verifying the bills. The aforesaid observations were made in respect of first running bill, which was signed when 90% of the work was complete.

[4]. Thereafter, second and final bills were submitted which are claimed to be forged at the instance of contractor Kuldeep Singh. In the aforesaid context, the Inquiry Officer has observed that most of the officers have denied to have signed the bills and these bills carry false signatures. It was proposed by the Inquiry Officer that the signatures be verified from designated agency of the Government of Haryana for further verification. In respect of aforesaid Jora Singh and Dharampal, Inquiry Officer

has observed that the Officers have verified the bills without physically verifying the material at site/erected at site/completion of work and have verified the bills in excess from the work order. Similar observations were made qua Sunil Kumar, JE and Kishori Lal, AFM. In respect of Baljeet Singh, the then HDM (OP) Divn., Narwana, observations were made that he did not check the inspection and DI's of material and physical progress of work before verifying the bills. He also verified the bills in excess from the work order. Similar observations were made qua Anil Kumar, the then, Divisional Accountant, Narwana.

[5]. FSL report has not been received so far and the same is still awaited. From the statements of field officers/officials, the Inquiry Officer observed that first running bill was signed by Nigam Officers/Officials which was routed through Circle Office at Jind, but second and Final bills might have been manipulated and fabricated by the contractor himself and got payment from the office on the basis of forged documents. Some of the officers have denied signing of the bills and the same needs to be verified from designated laboratory/agency of Government of Haryana. Precisely, for this reason, FSL report is still awaited and challan has already been presented in this case.

[6]. Contractor Kuldeep Singh has been granted regular bail in the aforesaid case by the High Court in CRM-M No.23305

of 2019 titled Kuldeep Singh Vs. State of Haryana vide order dated 19.09.2019. By relying upon the said order, Baljeet Singh and Jora Singh have been granted regular bail by the High Court in CRM-M No.41541 of 2019 titled Baljeet Singh Vs. State of Haryana and CRM-M No.41662 of 2019 titled Jora Singh Vs. State of Haryana vide order dated 07.12.2019.

[7]. High Court vide order dated 07.12.2019 in case of Baljeet Singh and Jora Singh noted in the context of the petitioners therein that the petitioners were not the persons competent to sanction the bills and the contractor Kuldeep Singh has already been granted concession of regular bail by the High Court vide order dated 19.09.2019. High Court without commenting upon merits of the case, proceeded to consider the cases of retired officers namely Baljit Singh and Jora Singh on the basis of Kuldeep Singh's bail on the premise that they were not the competent authorities to sanction the bills and allowed the prayer for grant of regular bail to them.

[8]. Concededly, it is not in dispute that the petitioners in all the three petitions are also similarly placed as that of Baljeet Singh and Jora Singh, therefore, I am of the view that petitioners are also entitled for regular bail on parity with that of Baljeet Singh and Jora Singh.

[9]. At this stage, without meaning anything on merits of the

case, it would be just and appropriate to grant regular bail to the petitioners subject to their furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/Illaq Magistrate.

[10]. Nothing observed hereinabove, shall be construed to be an opinion on merits of the case.

[11]. So far as, issuance of notice dated 10.12.2019 to Kuldeep Singh for cancellation of regular bail granted to him in CRM-M No.23305 of 2019 vide order dated 19.09.2019 is concerned, I have heard learned counsel for Kuldeep Singh.

[12]. Learned counsel for the contractor/Kuldeep Singh submitted that regular bail was granted to Kuldeep Singh vide order dated 19.09.2019. He has not misused the concession of bail in any manner. Vide order dated 22.11.2019 passed in CRM No.29955 of 2019 in CRM-M No.23305 of 2019, Co-ordinate Bench has observed in the following manner:-

“The applicant-petitioner was granted regular bail vide order dated 19.09.2019. Inadvertently, in the first paragraph of the said order passed in CRM-M-23305 of 2019, sections were not correctly mentioned in the first paragraph. Accordingly, the first paragraph is amended to read as under:-

“Present petition under Section 439 of the Code of Criminal Procedure is for grant of regular bail in case bearing FIR No.0352 dated 01.10.2018 under Sections 420, 409, 467, 468, 471, 120-B, 167 IPC and Sections 8, 9, 13 (c)

*of the Prevention of Corruption Act registered at Police Station Civil Lines, District Jind.”
Application stands disposed of.”*

[13]. Learned counsel for Kuldeep Singh submitted that order dated 19.09.2019 has further been relied upon in CRM-M No.41541 of 2019 and CRM-M No.41662 of 2019 in cases of Baljeet Singh and Jora Singh respectively and benefit of regular bail was granted to the aforesaid co-accused. The bail once granted can only be cancelled in case of misuse of the same and when the same has been obtained by fraud. No such situation arises in the present case. Complainant has not filed any such petition for cancellation of bail granted to Kuldeep Singh on 19.09.2019, nor any revision has been filed against the said order. Learned counsel further submitted that the petition for grant of regular bail filed by the contractor/Kuldeep Singh remained pending in the High Court for a period of more than four months. During the aforesaid period and before passing of the order dated 19.09.2019, comments and affidavits were called from the concerned quarter and the same were placed before the Court, which can be appreciated from the order dated 24.05.2019 passed in CRM-M No.23305 of 2019 which reads as under:-

*“The petitioner seeks grant of regular bail.
Counsel for the petitioner has argued that as*

per allegations, the petitioner (who is a contractor) has caused huge loss to the DHBVN in collusion with the officials. As per him, work was concluded satisfactorily, foot survey was conducted which was sanctioned by as many as 10 officials and thereafter yet another inspection was conducted by the certified Chartered Electrical Safety Engineer and now this false FIR has been lodged to victimize the petitioner.

Learned AAG Haryana, on instructions from ASI Vinod, has argued that there are two bills on which there are forged signatures. However, there is no explanation as to how the foot survey and report of the Engineer have come in favour of the petitioner. Let SP Jind file his personal affidavit after going through the record of this case. Learned AAG Haryana seeks one month time for the purpose. In my opinion, since it is the matter regarding personal liberty of an individual, time requested is too much. However, as requested by counsel for the petitioner, the matter is adjourned to 13.6.2019.”

[14]. The challan came to be filed during pendency of the aforesaid petition. While hearing CRM-M No.51191 of 2019 titled Sunil Kumar Vs. State of Haryana, vide order dated 10.12.2019, Co-ordinate Bench directed the Registry to issue notice to contractor/Kuldeep Singh to show cause as to why his regular bail be not cancelled.

[15]. In compliance of the aforesaid notice, Kuldeep Singh has filed reply by way of detailed affidavit dated 10.01.2020 in

CRM-M No.51191 of 2019 which is taken on record.

[16]. Learned counsel for Kuldeep Singh further submitted that the bail was granted to Kuldeep Singh after hearing both the parties and he has not misused the concession of bail in any manner. Bail was granted on 19.09.2019 and the same was corrected vide order dated 22.11.2019. The veracity of the order cannot be challenged by the complainant in the absence of any petition under Section 439(2) Cr.P.C and appeal/revision. Parameters for granting bail are different than the parameters on which the same can be cancelled. Cancellation of bail is always on the ground of misuse or having obtained it by some fraudulent means. Learned counsel for Kuldeep Singh placed reliance upon **Dolat Ram Vs. State of Haryana, 1995(1) SCC 349, Savitri Agarwal Vs. State of Maharashtra, 2009(3) RCR (Criminal) 792, Hazari Lal Das Vs. State of West Bengal, 2009(4) RCR (Criminal) 340, Bharatbhai Bhimabhai Bharwad Vs. State of Gujarat, 2019(5) RCR (Criminal) 958 and Aslam Babalal Desai Vs. State of Maharashtra, 1996(1) RCR (Criminal) 600.**

[17]. The order granting bail can either be challenged on merits before the higher Court or the same can be cancelled under sub-Section (5) of Section 437 Cr.P.C or sub-Section (2) of Section 439 Cr.P.C on consideration of relevant factors of

misuse in indulging in similar criminal activity, interfering with the course of investigation, attempts to tamper with the evidence/witnesses or threatens the witnesses or indulges in similar activities of hampering the smooth investigation, likelihood of fleeing to another country, attempts to make himself scarce by going underground or becoming unavailable to investigating agency or attempts himself beyond the reach of his surety etc.

[18]. For the reasons recorded hereinabove, I am of the view that the bail granted to Kuldeep Singh can only be cancelled in accordance with law, for which the complainant would be at liberty to resort to lawful remedy in accordance with law.

[19]. These petitions are disposed of accordingly.

10.01.2020

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No