

205

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

**CRM-M-29165-2021(O&M)
Date of decision : 04.08.2021**

Happy Singh @ Happy

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Himmat Singh Shergill, Advocate and
Mr. Ferry Sofat, Advocate for the petitioner.

Ms. Bhavna Gupta, DAG Punjab.

ALKA SARIN, J.

Heard through video conferencing.

This is the fourth petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in case FIR No.87 dated 06.06.2019 under Sections 21, 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 67 of the Information and Technology Act, 2000 registered at Police Station Gate Hakima, Amritsar, District Amritsar.

The first petition being CRM-M-33309-2019 and the second petition being CRM-M-23829-2020 were dismissed as withdrawn on 16.01.2020 and 17.11.2020, respectively. The third bail petition being CRM-M-6170-2021 was dismissed by a detailed speaking order on 22.03.2021.

Learned counsel for the petitioner has contended that the petitioner is innocent and has been falsely implicated. He has further

contended that the petitioner is a poor person and a newspaper vendor and has been wrongly and illegally named as an accused in the case. As per learned counsel, except for the mobile and other two sim cards nothing incriminating was recovered from the petitioner and even from the alleged recoveries the petitioner cannot be connected with the alleged crime. Lastly, it has been contended that the petitioner has been behind the bars since 27.06.2019 and that there is no other case pending against the petitioner.

Counsel for the State has countered the arguments of the learned counsel for the petitioner by submitting that all the grounds being raised in the present petition were also raised in the earlier petitions especially CRM-M-6170-2021. According to her, a detailed Status Report dated 21.03.2021 had been submitted in CRM-M-6170-2021 by way of affidavit of Parvesh Chopra, PPS, Assistant Commissioner of Police, Central, Amritsar wherein the entire modus operandi and the role of the petitioner had been spelt out. According to learned State counsel there was no change in circumstances since the dismissal of CRM-M-6170-2021 and therefore, this fourth bail petition of the petitioner should be dismissed.

Heard.

A comparison of the present bail petition and the earlier one (CRM-M-6170-2021) reveals that no new grounds for bail have been raised by the petitioner. The only change in circumstance, which has been pointed out by learned counsel for the petitioner, is the period of custody. Though an accused has a right to make successive applications for grant of bail, the Court also has to consider the reasons and grounds on which the earlier bail applications were rejected and the fresh grounds being raised. In the present case no new ground for grant of bail has been agitated. All the grounds

which have been raised were also raised in the earlier CRM-M-6170-2021 which was dismissed by a detailed speaking order after calling for a status report from the State. It is well settled that a subsequent bail petition can be moved on fresh grounds or in changed circumstances.

In the case in hand the present fourth bail petition is not legally maintainable as no fresh ground has been raised and argued. The grounds which were urged and advanced at the time of disposal of CRM-M-6170-2021 cannot be opened to be reagitated as this would lead to speculation and uncertainty. This issue has been dealt with by the Apex Court in the matter of ***Kalyan Chandra Sarkar vs. Rajesh Ranjan [(2004) 7 SCC 528]***, wherein it was held as under :

“20. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at least on four occasions order refusing bail has been affirmed by this Court and subsequently when the High Court did grant bail, this Court by its order dated 26-7-2000 cancelled the said bail by a reasoned order. From the impugned order, we do not notice any indication of the fact that the High

Court took note of the grounds which persuaded this Court to cancel the bail. Such approach of the High Court, in our opinion, is violative of the principle of binding nature of judgments of the superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render ineffective the principles enunciated therein which have a binding character.”

Again in ***Kalyan Chandra Sarkar vs. Rajesh Ranjan [(2005) 2***

SCC 42], the Supreme Court held that :

“20. The decisions given by a superior forum, undoubtedly, are binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view of the guarantee conferred on a person under Article 21 of the Constitution, it is open to the aggrieved person to make successive bail applications even on a ground already

rejected by the courts earlier, including the Apex Court of the country.”

It is trite that the period of custody by itself cannot be taken as a change in circumstances. A detailed order dated 22.03.2021 was passed in CRM-M-6170-2021 dealing with the arguments on merits raised on behalf of the petitioner. Since then there is no change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete.

In view of the discussion above, I do not find any merit in the present petition which is accordingly dismissed.

It is made clear that nothing observed herein shall be treated as an expression of opinion on the merits of the case.

04.08.2021
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO