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

**CRM-M-10376-2021 (O&M).
Decided on: March 29, 2022.**

Balwinder Kumar

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.D.S.Virk, Advocate,
for the petitioner.**

Mr.Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present **second** petition has been filed under Section 439 of the Code of Criminal Procedure, seeking regular bail in FIR No.118 dated 29.4.2020, registered under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Moti Nagar, District Police Commissionerate, Ludhiana.

Learned counsel for the petitioner has submitted that on earlier date also, he had prayed for the withdrawal of the present petition and he still prays for the withdrawal of the present petition for regular bail.

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The present petition for regular bail was filed on 25.2.2021 and on 29.11.2021, learned counsel for the petitioner had prayed for the withdrawal of the present petition in view of the fact that the petitioner had already been released on bail by the learned trial Court and therefore, learned State counsel was directed to verify the aforesaid fact. Thereafter, it was pointed out on the next date of hearing that during pendency of the present petition for regular bail, the learned trial Court has granted bail to the petitioner on 13.7.2021 and therefore, this Court had directed the Sessions Judge, Ludhiana to take custody of the case file and to send a report to this Court as to whether petitioner while filing petition for bail before the learned Special Judge had disclosed about the pendency of the present petition before this Court or not and as to whether the learned Special Judge was made aware about the pendency of the present petition before this Court or not.

Thereafter, a report has been received from the learned District and Sessions Judge, Ludhiana, dated 10.12.2021 and in the report, it has been stated that there is nothing on the record to show that the Court which had granted bail was made aware about the pendency of the present petition before this Court. The original record was also sent to this Court including the application filed by the learned counsel for the petitioner and also the orders passed by the learned Judge Special Court, Ludhiana dated 13.7.2021.

A perusal of the bail application dated 15.6.2021 filed

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before Sessions Judge shows that two notes are incorporated on the first page of the application. In the first note, it has been stated that it was the second application of the petitioner for bail and the previous application was withdrawn from the Court of learned Additional Sessions Judge, Ludhiana and in the second note, it has been stated that trial of the case is pending in the Court of learned Additional Sessions Judge, Ludhiana for 13.7.2021 but in the averments made in the entire application, nothing has been stated with regard to the pendency of the present petition before this Court. The bail application is supported by affidavit of one Lachmi Rani.

A perusal of the order dated 13.7.2021 shows that even the Public Prosecutor did not state anything with regard to the pendency of the present petition for bail before this Court. However, the bail has been granted by the learned Special Court, Ludhiana, on its own merits considering the custody of the petitioner and also the fact that confiscated quantity was a non-commercial quantity.

On a specific query being put to the learned Deputy Advocate General, Punjab as to whether the order dated 13.7.2021, has been assailed by the State or not, he, on instructions, has submitted that the said order of bail dated 13.7.2021 has not been assailed by the State in any Court of law and therefore, the same has attained finality. In other words, the petitioner is on bail and the order granting bail passed by the learned Special Court, Ludhiana has attained finality as on today.

The learned counsel for the petitioner has, however,

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prayed for the withdrawal of the present petition in view of the fact that since the bail has been granted by the learned Judge Special Court, Ludhiana, he may be permitted to withdraw the present petition. However, it is an admitted position that during pendency of the present petition for regular bail, the petitioner had filed bail application before the learned Judge Special Court, Ludhiana, without disclosing about the pendency of the present petition before this Court and he has been granted bail although on its own merits.

This Court had considered this wrongful practice which is being carried on, in **CRM-M-52620-2019, titled Kulwant Singh @ Sajan Vs State of Punjab, decided on 11.3.2022** and had issued guidelines to the Sessions Divisions of the States of Punjab, Haryana and Union Territory, Chandigarh and also to the Director of Prosecution of both the States of Punjab, Haryana and Union Territory, Chandigarh. This Court also held that each and every case is to be seen on the facts and circumstances of that case and there could be no straight jacket formula as to whether costs should be imposed for such a mis-conduct or whether bail granted by the learned lower Court should be cancelled/annulled. So far as the facts of the present case are concerned, the entire record of the lower Court which has been sent to this Court would show that neither the learned counsel for the petitioner nor the Public Prosecutor nor the person who filed affidavit along with bail application brought to the notice of the Judge Special Court, Ludhiana, that bail application of the same petitioner is pending before the High Court. A

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note was appended with the application for bail with Special Judge, with regard to the earlier bail petition which was withdrawn from the said Court but there was nothing with regard to the present petition for regular bail pending before this Court and therefore, it is clear that there has been an active concealment and suppression of material fact. Therefore, the prayer made by the learned counsel for the petitioner for withdrawal of the present petition is hereby rejected.

This Court would now consider as to whether the costs should be imposed upon the petitioner or the bail granted to the petitioner by Special Court, Ludhiana should be cancelled or annulled. Considering the ratio of the judgment of this Court in **Kulwant Singh @ Sajjan** (supra), in the facts and circumstances of the present case, the bail order dated 13.7.2021 was passed on its own merits and the same has attained finality because the State has not assailed the same. On the face of it, concealment has been made regarding pendency of present petition.

Therefore, considering the aforesaid judgment as well as the facts and circumstances of the present case, this Court is of the considered view that in order to secure the ends of justice, the petitioner must be fastened with some costs. Consequently, the present petition is hereby dismissed. It is directed that the petitioner shall pay Rs.10,000/- (Rupees Ten Thousand Only) as costs which shall be deposited with the learned Judge Special Court, Ludhiana, within a period of two months from today. After the deposit of the said amount, the learned Judge Special Court,

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Ludhiana, shall transmit the said amount to the State Legal Services Authority. In case the petitioner fails to deposit the aforesaid costs within time, then the same shall be recovered from the petitioner in accordance with law.

The original record of the present case be sent back to the Sessions Judge, Ludhiana, forthwith.

March 29, 2022.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No