

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

CRM-M-10231-2017(O&M)

Date of Decision : December 15, 2022

Boria Singh		Petitioner
	Vs.	
State of Punjab		...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Nandan Jindal, Advocate
for the petitioner.

Mr. P.S. Pandher, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

CRM-47231-2022

Allowed, as prayed for.

CRM-M-10231-2017

Prayer in this petition is for setting the order dated 21.2.2017 passed by the Chief Judicial Magistrate, Sangrur vide which the petitioner is directed to deposit a fine of Rs. One Lac in terms of the judgment of conviction and order of sentence dated 25.10.1999 passed by the Judge, Special Court, Sangrur vide which the petitioner was sentenced 10 years RI along with a fine of Rs. One lac in FIR No.42 dated 18.4.1993 under Sections 15 of the NDPS Act, registered at Police Station Lehra, District Sangrur.

On 4.7.2022, the following order was passed :-

"Learned counsel for the petitioner submits that the petitioner and co-accused Jarnail Singh were directed to undergo 10 years R.I.

A perusal of the record shows that the petitioner and co-accused Jarnail Singh filed CRA-S-1160-SB-2000, which was dismissed by this Court vide order dated 01.08.2008. Thereafter, they preferred an SLP before the Hon'ble Supreme Court vide Crl. Appeal No.465 of 2009, which was decided vide order dated 13.02.2013, observing that the petitioner and co-accused Jarnail Singh have already undergone the sentence of 10 years R.I. imposed by the trial Court, including remission granted by the State Govt. and they were released from the judicial custody.

However, there was no reduction of fine either by this Court or by the Hon'ble Supreme Court, therefore, the State moved an application before the Chief Judicial Magistrate for recovery of fine of Rs.1.00 lac.

Since there is no representation on behalf of the petitioner, list again on 29.11.2022. Registry is directed to inform learned counsel for the petitioner about the next date of hearing."

Reply by way of affidavit of DSP, Sub Division, Moonak is on record, in which after giving details of the FIR as well as the judgment of conviction and order of sentence awarding a sentence of 10 years RI and a fine of Rs. One lac by the Judge, Special Court, Sangrur vide judgment dated 25.10.2019, are duly explained.

It is further stated that as per the custody certificate of petitioner received from the Superintendent, District Jail, Sangrur, the petitioner has undergone a total sentence of 11 years 00 months and 04 days when he was released vide order dated 25.2.2010 in

CRM-M-13360-2008. However, it is stated that the fine of Rs.One lac is not paid and, therefore, the Chief Judicial Magistrate, Sangrur is justified in passing the impugned order dated 21.2.2017 directing the petitioner to deposit the fine.

It would be relevant to reproduce the order of sentence dated 25.10.1999, which reads as under :-

"I have heard the learned Additional P.P. the convict and their counsel on the question of sentence. Keeping in view the fact that the accused are not previous convicts minimum sentence under the Act is awarded and they are sentenced to undergo rigorous imprisonment for 10 years each and to a fine of Rs.1,00,000/- (one lac) each and in default of payment of fine to further undergo rigorous imprisonment for one year under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985. The case property shall, however, be kept intact by the prosecution for the purpose of evidence in the case as and when Gurcharan Singh proclaimed offender is arrested. The period of detention undergone by the accused during investigation and trial shall be a set off again the substantive sentence of imprisonment. Separate proceedings for confiscation of the truck in which contraband article was loaded be also started."

A perusal of the in order of sentence would show that the petitioner was awarded RI for a period of 10 years and to pay a fine of Rs. One Lac and in default of payment of fine, to further undergone RI for another one year.

The affidavit of the DSP, Sub Division, Moonak clearly shows that the petitioner has undergone 11 years of sentence, i.e. 10 years of RI awarded by the Judge, Special Court and additional one year in lieu of default of payment of fine of Rs.One lac.

It is worth noticing that even on 16.2.2010, the Chief Judicial Magistrate, Sangrur has itself acknowledged that the petitioner has served 11 years 05 months and 17 days in jail. The operative part of this order reads as under :-

"Letter from the Superintendent, District Jail, Sangrur received wherein the Superintendent, District Jail, Sangrur reported the convict Jarnail Singh son of Chota Singh resident of Chkalisher Police Station Bareta, District Mansa was convicted to RI for ten years and fine of Rs.1,00,000/- in default of payment of fine further RI for one year under Section 15 NDPS Act on 25.10.1999. The Criminal Appeal No.1160-SB-1999 has been dismissed by the Hon'ble High Court, vide order dated 1.8.2008. Therefore, the total sentence to be served by the convict was 11 years. As per the report of Superintendent, District Jail, Sangrur, the convict has served 06 years 02 months and 17 days in sentence and if remission is counted to the convict, he served another sentence 05 years 03 months 17 days, if remission granted under Sections 161 of the Constitution by the State of Punjab is extended to the convict.

As the convict has served 11 years 05 months and 17 days in jail, so he became entitled to bail as per the order passed by the Hon'ble High Court in Criminal Writ No.1157 of 2007

decided on 10.8.2007, titled as Sukhwinder Vs. State of Punjab. Therefore, he is admitted to bail on his furnishing personal bonds in the sum of Rs. One lac with one surety in the like amount with the conditions that the convict shall remain bound by the condition imposed by the Hon'ble Court in Crl. Writ Petition No.13336 of 2008 in Mohan Singh and others Vs. State of Punjab that he will furnish undertaking in jail before the Jail Superintendent, Sangrur at the time of his release that he will not leave the country without prior permission of the Court and will keep peace and will continue informing about his residential address every month by appearing in Court. Copy of the order be sent to the Superintendent, District Jail, Sangrur for compliance"

In view of what as been observed above, since the petitioner has already undergone the default sentence of one year over and above the RI awarded by the trial Court, the Chief Judicial Magistrate was not justified in calling upon the petitioner to deposit the fine of Rs. One lac.

Accordingly, this petition is allowed and the order dated 21.2.2017 passed by the Chief Judicial Magistrate, Sangrur is set aside.

(ARVIND SINGH SANGWAN)
JUDGE

December 15, 2022
satish

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO