

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

209

CRM-M-9250-2020

Date of Decision: 31.05.2022

Balwinder Singh alias Binder

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J.S. Warring, Advocate,
for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

Present petition filed under Section 439 of Cr. P.C. for the grant of regular bail to the petitioner in case bearing FIR No.60 dated 22.08.2016 under Section 22 Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Arniwala, District Fazilka.

The present bail petition was filed on 28.02.2020 and when the matter was taken up 18.04.2022, the learned State counsel had informed this Court that the petitioner has already been released on bail by the learned Special Judge, Special Court Fazilka on 15.09.2020. This Court, therefore, directed the District and Sessions Judge, Fazilka to submit a report along with original record of the bail application and the orders passed by learned Special Court, Fazilka giving details of the application filed by the petitioner during the pendency of the bail application before this Court along with the report as to whether the learned Special Judge, Fazilka was apprised about the pendency of the bail application before this Court or not. The learned

District and Sessions Judge, Fazilka, thereafter filed a report dated 20.05.2022 and had also sent the original records. Perusal of the report would show that the petitioner filed a bail application captioned as “third regular bail application” on 10.09.2020 and his regular bail application was allowed by the learned Special Judge on 15.09.2020. It has been further stated in the report that on perusal of the above said decided bail application it transpired that the pendency of the regular bail application before the High Court was not disclosed in the aforesaid bail application dated 09.09.2020. Furthermore, along with the bail application an affidavit dated 09.09.2020 of Bhagwan Singh father of the petitioner was also enclosed without disclosing that the similar bail application is already pending before the High Court and even in the orders passed by the learned Sessions Court while granting bail on 15.09.2020 it was not reflected that the matter regarding pendency of bail application before the High Court was brought to the notice of the Court.

A perusal of the record would show that the application for bail was filed before the learned Sessions Judge, Fazilka dated 09.09.2020 supported by an affidavit by one Bhagwan Singh father of the accused-applicant(petitioner) and as per the report of the learned Sessions Judge, the same was filed on 10.09.2020. A perusal of the bail application would show that on the left side corner of the first bail it has been stated that this was the third regular bail application but there is nothing in the bail application or in the affidavit to show that the petitioner has already filed a bail petition before this Court, which was already pending. In this way, the petitioner has actively concealed the pendency of the bail petition before this Court and still he filed the bail application before the learned Special Judge, Fazilka and he was granted bail.

This Court while dealing with this issue had passed a detailed judgment dated 11.03.2022 in CRM-M-52620-2019 titled as “***Kulwant Singh @ Sajan vs. State of Punjab***”, wherein various guidelines were issued. However, it appears that the present bail which was allowed by the learned Special Judge was prior to the aforesaid guidelines issued by this Court in aforesaid judgment. In “***Kulwant Singh***” (*supra*) it was also held that facts and circumstances of each and every case is to be seen. Perusal of the record as well as the report of the Sessions Judge would show that the present case pertains to NDPS Act, therein allegedly the recovery was 11 tablets of fortadole and 160 tablets of TRIE-SR containing 70 grams of Tramadol Hydrochloride. The learned Additional Public Prosecutor while appearing before the learned Special Judge, Fazilka also did not bring to the notice of the Court with regard to the pendency of the present petition before this Court and it appears that on the bail application which was supported by an affidavit filed by the father of the petitioner the pendency of the present case was actively concealed. However, it further appears that the orders of granting bail were passed on its own merits and therefore while considering the aforesaid judgment passed in “***Kulwant Singh***” (*supra*), this Court is of the view that instead of setting aside and annulling the bail order passed in favour of the petitioner by the learned Special Judge, it will be in the interest of justice to impose costs upon the petitioner.

Consequently, the present petition is dismissed with Rs.10,000/- as costs. The costs shall be deposited by the petitioner before the Chief Judicial Magistrate, Fazilka within a period of two months from today. On deposit of the same the Chief Judicial Magistrate shall further transmit the costs to the District Legal Service Authority, Fazilka. The original record of

the trial Court/Special Court be returned back forthwith.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case before the trial Court and is meant only for the purpose of decision of present petition.

31.05.2022
Sunil Devi

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:

Yes
2. Whether reportable:

Yes/No