

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

105

**CRM-M-33913-2022 (O&M)
Date of Decision: 05.08.2022.**

Kulwant Kaur and others

....Petitioners.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Suneet Pal Singh Aulakh, Advocate for the petitioners.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

Mr. J.S. Brar, Advocate for the complainant.

Amol Rattan Singh, J. (Oral)

On 03.08.2022, the following order had been passed by this court:-

“By this petition, the petitioners seek the concession of 'anticipatory bail' under the provisions of Section 438 Cr.P.C., upon FIR No.107, dated 12.07.2022, having been registered at Police Station P.S. Kabarwala, District Sri Muktsar Sahib, Punjab, alleging therein the commission of an offence punishable under the provisions of Section 174-A of the IPC.

Learned counsel for the petitioners, firstly, submits that as per the order issued by the office of the Deputy Commissioner on 01.04.2022 (Annexure P-5), as regards the complainants before the irrigation authorities, (i.e. Kuldeep Singh and others), they had not been given the connections from outlet no.4 47167-R and therefore such connection was to be restored from outlet no. 57050-F, so that they could irrigate their land.

Upon query as to the order of this court as has been referred to in the aforesaid document Annexure P-5, learned counsel points to Annexures P-2 ,P-3 and P-4, the first two of which are orders passed by a co-ordinate bench of this court on 07.10.2021 and 03.11.2021 in CWP no.20535-2021 and which read as follows:-

07.10.2021

“Learned State counsel has not inspected the record.

He is directed to read the statutory provisions and then inspect the record. The record be page marked in pencil. The Court copy be also page marked accordingly.

Adjourned to 26.04.2022.

To be heard along with CWP No.8403 of 2021.

Meanwhile, despite the stay order passed by this Court, in case the Scheme has been implemented, the private respondents will get their turn of water.”

05.11.2021

“By placing reliance on Vernacular of Annexure P-5, it is submitted that the scheme for transfer of area from one outlet to another has not been published in accordance with the statutory provisions.

Notice of motion.

Ms. Upasana Dhawan, A.A.G., Haryana, accepts notice on behalf of respondents No. 1 and 2 and waives service.

Respondents No. 3 to 6 be served through ordinary manner.

Dasti as well.

Records of the Divisional Canal Officer be also summoned for 27.10.2021, to enable learned State counsel to go through the same.

Adjourned to 03.11.2021.

Meanwhile, the scheme will not be implemented.”

He thereafter points to the order dated 02.06.2022 passed by this court in COCP no.1028 of 2022, which reads as follows:-

“1. Prayer in the petition is for initiating proceedings against the respondents for intentional and willful defiance of order, Annexure P/1, dated 03.11.2021, in CWP-20535-2021.

2. At the outset, learned Addl. AG, Punjab, on telephonic instructions from the respondent states that order Annexure P/1 dated 03.11.2021, in CWP-20535-2021, would be complied with and appropriate orders in respect thereto would be passed by 5:00 p.m. on 06.06.2022 and the same would be implemented within a period of one week thereafter.

3. The same satisfies learned counsel for the petitioner, who states that in the circumstances, the petitioner does not press the instant petition and may be permitted to withdraw the same, at this stage.

4. In view of the statement of learned Addl. AG, Punjab, as well as statement of learned counsel for the petitioner, the instant petition is disposed of as not calling for any action against the respondent under the Contempt of Courts Act, 1971, while directing the respondents to ensure adherence to the assurance given through the learned Addl. AG, Punjab, within the stipulated period of time. Needless to mention, the petitioner would be at liberty to move an application for revival of the contempt petition in the eventuality of the undertaking/assurance held out by the learned Addl. AG, Punjab, not being complied with within the stipulated period of time.”

He thus submits that with the scheme in question not having been implemented even as per the letter of the office of the Deputy Commissioner, Abohar, the directions of this court cannot read to mean that the scheme had been implemented.

Learned counsel for the petitioners next submits that in any case no offence punishable under Section 353 of the IPC is made out, in as much as no assault or criminal force was applied to any person even as per the FIR, which is a necessary ingredient of the said provision which reads as follows:-

“353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

He submits that therefore with that offence not made out and with the other offences, i.e. Sections 186, 148 and 149 of the IPC, all being bailable offences (Sections 148 and 149 thereof to be obviously read with Section 186), the petitioners deserve to be admitted to bail.

Section 186 of the IPC reads as follows:-

“186. Obstructing public servant in discharge of public functions. —Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

Notice of motion.

Mr. Rana Harjasdeep Singh, DAG, Punjab, accepts notice at the asking of the court on behalf of the respondent State, with Mr. Kulwant Sigh, Advocate, accepting notice on behalf of respondents no.2 and 3.

Learned Stated counsel submits that in terms of what is contained in the order dated 02.06.2022, officials who had gone to ensure that complainants were given their turn of water, were obstructed by the petitioners and their co-accused and therefore they do not deserve to be admitted to bail.

Learned counsel appearing for the complainant has produced in court today a communication dated 20.09.2021, addressed by the Zileadar, Section Rasulpur, Sri. Muktsar Sahib, to the Deputy Collector, Abohar Canal Division, which reads as follows:-

“Sub:- Regarding implementation turn of water of outlet burjee No.47167-R Sukhchain Rajabha village Kolianwali.
Sir,

Regarding the above said, subject Parat waraband which has been sanctioned by you on 17.09.2021, this Parat waraband has been pronounced in the village on 19.09.2021 by going to the spot in the presence of shareholders of the outlet meaning thereby departmental proceedings to implement the turn of water have been completed. Today on 20.09.2021 this turn of water as per set A has been implemented. By annexing join statement of shareholders, report for our knowledge and information is being sent to you.

Sd/Eng.with seal
Zileadar Section Rasulpur,
Sri. Muktsar Sahib 20.09.2021”

He thus submits that actually the scheme had been implemented and therefore with the Deputy Commissioner in any case not the authority under the provisions of Northern India Canal and Drainage Act, 1873, the said document dated

01.04.2022 has absolutely no meaning whatsoever in terms of the law; and further, with this court already having directed vide its order dated 03.11.2021 that if the scheme has been implemented the private respondents in that petition (stated to be the complainants in the matter), would get their turn of water with an assurance in that regard also having been given before this court by the State counsel, in COCP no.1028-2022, the petitioners do not deserve to be admitted to bail, they having obstructed the officials from doing their duty in terms of the order passed by this court, as also the competent authority in terms of the aforesaid Act.

Learned counsel for the petitioners at this stage has also produced in court what is shown to be a copy of a “Short Reply (Present status)” filed in COCP no.2268 of 2021, titled as “Jaswinder Singh vs. S.C.O., F.C.C., Fzr and others”, with the said reply shown to be dated 22.03.2022, filed by the Deputy Collector, Abohar, Canal Division, before this court.

He points to paragraph 3 as follows:-

“3. It is pertinent to mention here that although the concerned Zilladar had distributed parchies for the information of the concerned shareholders including the petitioner but the instructions regarding implementation of warabandi on the basis of orders of Deputy Collector dated 03.08.2021 and D.C.O., Abohar, dated 16.09.2021, remain unimplemented at ground till date. As such, no contempt of Hon'ble Court has been committed by the Respondents 1 to 3.”

The Deputy Collector, Abohar Canal Division, Abohar, is directed to be personally present in court on 05.08.2022.

Adjourned to the same date, i.e. 05.08.2022.

To be shown in the urgent motion list and to be taken up as the first case of the day.

In the meanwhile, till 05.08.2022 only and specifically at this stage, the petitioners be not arrested.

A copy of this order be given to learned State counsel under the signatures of the Reader of this court and to be telephonically also conveyed to the Deputy Collector.

Naturally, the Deputy Collector would bring all necessary record with him.”

Today the Deputy Collector, Irrigation, Abohar (now transferred), is present in court and has submitted that in fact an order was subsequently passed, to the effect that with no *Parchies* (slips), having been issued, the complainants need not be given the water from RD No.47167-R.

He states that in fact it was in view of the law and order situation created by the petitioners and the co-accused who were blocking roads etc. to try and defeat the orders passed by the canal authorities.

Upon specific query, he submits that even ladies were involved in the process of blocking road etc.

Keeping in view the above and with it to be noticed again that vide an order passed on 03.11.2021 in CWP-20535-2021, this Court (co-ordinate Bench), had directed that in case the scheme has been implemented, the private respondents therein would get their turn of water; and it having been admitted even by the Deputy Collector today, that on 03.08.2021, in fact, he had sanctioned the *Warabandi* in terms of the order of the Divisional Canal Officer and the Superintending Canal Officer in favour of the complainants, and with it also not denied that thereafter the Zileadar had made a report to him on 20.09.2021 that, in fact, he had implemented the said orders, I would see absolutely no reason to entertain this petition, which is consequently dismissed.

However, it is made clear that all observations made in this petition are only in the context of a petition filed invoking the provisions of Section 438 of the Cr.P.C. seeking anticipatory bail, and in case of the arrest of the petitioners if they file a petition under the provisions of Section 439 thereof, obviously that would be dealt with wholly on its own merits, expeditiously.

(AMOL RATTAN SINGH)
JUDGE

05.08.2022

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No