

202 (2 cases)

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

(1)

**CRM-M No. 42473 of 2020
Date of Decision: 28.04.2022**

Usha Sharma

..... Petitioner

Versus

State of Punjab and another

..... Respondent

AND

(2)

CRM-M No. 36143 of 2020

Jyoti Madan

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Bharat Bhushan Choudhary, Advocate
for the petitioner – complainant
(in CRM-M No. 42473 of 2020)

Mr. Kanhiya Soni, Advocate for
Mr. Pawan Garg, Advocate, for the petitioner(s)
(in CRM-M Nos. 43661 & 36143 of 2020)

Mr. Bhupender Beniwal, Assistant Advocate General, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. This order shall dispose of the present two petitions, as the same arise from a common FIR No. 353 of 15.09.2020, registered at Police Station Zirakpur, District SAS Nagar, constituting therein offences, under Sections 420 / 120-B of the IPC.

2. In CRM-M-42473-2020, the petitioner – complainant, prays for cancellation of ad interim anticipatory bail, in respect of FIR (supra), as,

became granted to one Jyoti Madan, on 05.11.2020, by this Court, in

another CRM-M-36143-2020, as became preferred by her.

3. In CRM-M-36143-2020, this Court, on 05.11.2020, had made an order of ad interim bail in respect of FIR (supra) qua Jyoti Madan, who is arrayed as respondent No. 2 in CRM-M-42473-2020. The imperative bail conditions, which are contended by the learned counsel for the aggrieved petitioner – complainant, to become breached, at the instance of the accused concerned, are extracted hereinafter:-

“ xxxx

In addition to the bail bonds/surety and in pursuance to the offer made by counsel for the petitioner, the petitioner shall hand over, within one month from today, the original property papers/bank guarantee of Rs.15 lakhs with the Investigating Officer. She would further give an undertaking that she will not involve herself in any other case like the present and in case she is found involved and held guilty in any subsequent case after the present, the property papers/bank guarantee (that she shall deposit with Investigating Officer who, in turn, shall deposit the same with the trial Court when the trial begins) worth Rs.15 lakhs which shall remain as security till the decision of the trial court, shall stand forfeited and the same shall be deposited in the Government Treasury, which shall await further orders by the trial Court. The same shall be without prejudice to the defence of the petitioner in the trial.”

4. However, the learned counsel appearing for one Jyoti Madan submits, that the above made conditions, upon, the bail petitioner, have been meted absolute, and, completest compliance, at the instance of the bail petitioner. In making the afore address, he makes a reference to an order, existing on the file of CRM-M-43661-2020 (filed by one Pawan Kumar, the

becomes extracted hereinafter.

“ Learned counsel for the petitioner herein would contend that the petitioner has been falsely implicated in the instant FIR. It is contended that the co-accused, who is none other than the wife of the petitioner, has been granted interim bail on 5.11.2020 by a co-ordinate Bench of this Court.

It is also contended that in fact, the very FIR is not maintainable because the complainant herein had already compromised the matter in a civil suit that had been filed. The said suit was then dismissed on that basis. It is also submitted that the wife of the petitioner herein has complied in substance the terms of the order dated 5.11.2020 and has furnished an affidavit of one Iqbal Nath, who has pledged his property as surety for Jyoti Madan and the value of the said property is worth `36 lakhs per acre. Learned counsel further submits that the surety has already been accepted by the Investigating Officer.

Notice of motion.

Ms. Rashmi Attri, DAG, Punjab, who is present through the medium of Video Conferencing, accepts notice on behalf of respondent—State and, on instructions from ASI Barinder Singh, confirms that the surety given by Iqbal Nath, in terms of the order passed by a co-ordinate Bench has been accepted.

Adjourned to 23.3.2021.

Meanwhile, the petitioner is directed to join the investigation within a period of one week and on his doing so, the petitioner be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall continue to join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.”

5. However, a reading of the above extracted order, as, made by

this Court on 23.12.2020, an anvil whereof, it is contended by the counsel

for the respondent, that hence the completest compliance becomes meted with the above made conditions, as, embodied in the interim bail order (supra), as, made by this Court, rather does not reveal, that the bail petitioner, who, became encumbered with the condition, to furnish bank guarantee comprised in a sum of Rs. 15 lakhs, within one month from the date of order of 05.11.2020, or to furnish original property paper, within the afore period, to the Investigating Officer (IO) concerned, rather meted any compliance therewith. The reason for making the conclusion, arises from the factum, that the above order becomes rested, upon, a submission of the learned counsel concerned, and obviously required authentication from the learned State Counsel, but when the learned State Counsel, on instructions, given to him, by the Investigating Officer concerned, submits that the afore condition(s) has been breached at the instance of the bail petitioner, as also when a reading of the reply filed by the State, rather supports the above submission. Therefore, the above made submission loses all its force. Though, it was open for the bail petitioner to seek the relaxation of the afore imposed conditions, by making a motion, before this Court, or, to ask for extension of time being granted to her, rather for meteing compliance thereto. However, neither any motion became preferred, before this Court, rather for seeking relaxation of the afore imposed conditions, upon her, nor she asked for further extension of time being granted to make compliance thereof, rather the above insistence by her counsel concerned was emphatically raised, Consequently, in face of the afore motions being not preferred, before this Court, by the bail petitioner, and, rather with condition (s) (supra) becoming evidently breached. Therefore, the above carried order

acquires conclusivity, and also is unrecallable at this stage, rather, even though recouring the mandate of Section 462 of the Cr.P.C.

6. Consequently, the afore breach of an imperative bail condition, constrains this Court to allow the petition bearing CRM-M-42473-2020, seeking cancellation of the interim bail order made qua Jyoti Madan (petitioner in CRM-M-36143-2020), and, also this Court is further constrained, to dismiss the petition (supra) filed by the afore Jyoti Madan, who is seeking the indulgence of hers being admitted to anticipatory bail.

7. The petition bearing CRM-M-42473-2020 is allowed, while petition bearing CRM-M-36143-2020 is dismissed.

April 28, 2022
'dk kamra'

(SURESHWAR THAKUR)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>