

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

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CRM-M-49846-2021

Date of Decision : January 19, 2022

HARWINDER SINGH @ KALA

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Through Video Conferencing

Present : Mr. Rajat Malhotra, Advocate
for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.158 dated 21.8.2021 under Sections 323, 341, 325, 506, 148, 149 IPC (later on added Section 307 IPC), registered at Police Station Daresi, District Police Commissionerate Ludhiana, Punjab.

The learned counsel for the petitioner has submitted that it is a case where earlier the FIR was registered under Sections 323, 341, 325, 506, 148, 149 IPC and since the offences were bailable in nature, the petitioner was released on bail on 26.8.2021. Thereafter Section 307 IPC was added on 22.9.2021 but without filing any application before the competent Court or seeking any permission or without any cancellation of bail by the competent Court. He further submitted that thereafter the petitioner has been arrested by the police on 8.10.2021. He submitted that the action of the police in arresting the petitioner was contrary to the law laid down by the Hon'ble Supreme Court in **Pradeep Ram Vs. State of Jharkhand and anr. 2019 (3) RCR(CrL) 538**. While referring to para No.29 of the judgment, learned counsel for the petitioner has submitted

that the Hon'ble Supreme Court had laid down the law with regard to the process which is to be adopted by the police whenever a person is earlier released on bail but thereafter on the addition of another provision, an appropriate application is required to be filed before the learned trial Court or the competent Court but in the present case the same has not been done and therefore, the petitioner is entitled for the grant of regular bail.

Mr. Thind, learned DAG, Punjab has submitted that the aforesaid factual position is correct. He submitted that it is correct that earlier the petitioner was bailed out because the offences are bailable in nature and thereafter Section 307 IPC was added but no application was filed before any competent Court.

I have heard the learned counsels for the parties.

Para No.29 of the aforesaid judgment is reproduced as under:-

“29. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Section 437(5) or 439(2) of Cr.P.C. for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of Cr.P.C., 1973 can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be

arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.”

It is a case where the petitioner was earlier bailed out but on the addition of Section 307 IPC, he was arrested without seeking any permission from the competent Court or without filing any appropriate application either for cancellation of bail or for seeking permission to arrest the petitioner and, therefore, there was a total violation of the law laid down by the Hon'ble Supreme Court in Pradeep Ram's case (supra).

In view of the aforesaid factual position, this Court deems it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

January 19, 2022

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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No