

CRM-M-18-2023 (O&M)

208

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18-2023 (O&M)

Date of decision: July 24, 2023

Sajan Sharma

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Petitioner and his father in person.

Mr. Dhruv Dayal, Additional AG, Punjab assisted by
Mr. Naunihal Singh, Commissioner of Police, Amritsar and
Inspector Shiv Darshan, I.O.

Complainant and his son in person.

ARUN MONGA, J. (ORAL)

Present petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for quashing/ setting aside of impugned order dated 15.12.2022 (Annexure P-6) whereby fresh non-bailable warrant was issued against the petitioner, in case FIR No.341 dated 21.12.2020, registered under Sections 323, 235, 294, 201 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station B-Division, Amritsar.

2. Petitioner was earlier granted concession of bail. However, vide order dated 19.11.2022 (Annexure P-1), his bail was cancelled by learned Court below due to his non-appearance and bail/ surety bonds in the form of FDRs were forfeited, and non-bailable warrant was issued against the petitioner. Aggrieved, petitioner filed two petitions; one CRM-M-57965-2022 assailing order dated 19.11.2022 vide which his bail was cancelled and surety bonds in the form of FDRs was forfeited, and second petition seeking anticipatory bail bearing CRM-M-58405-2022, which were disposed of vide order dated 14.12.2022 (Annexure P-2) with a direction that in case petitioner surrendered before learned Court below by 15.12.2022 and moved an application for

CRM-M-18-2023 (O&M)

grant of regular bail, learned trial Court to consider the same expeditiously, while directing as under:

- “3. Since the absence of the petitioner on 19.11.2022 is stated to be the first instance of default on his part and the petitioner is a young boy pursuing C.A., the trial Court is expected to take a lenient view in the matter.
4. It is, however, directed that in case the trial Court chooses to grant bail to the petitioner, then FDRs, which were ordered to be forfeited, be released.”

3. Pursuant thereto, vide order dated 15.12.2022 (Annexure P-3), learned trial Court stated that “With regard to the bail bonds in the shape of FDR, the Hon’ble Punjab & Haryana High Court, Chandigarh be released of the same”. Further, learned trial Court vide order of even date, granted bail to the petitioner subject to the conditions that “*the accused will not move unnecessary exemptions and he will furnish the bail bonds and surety bonds to the tune of Rs.1 lac with one surety.*” Also, learned trial Court vide separate order of even date (Annexure P-6) ordered to issue fresh non-bailable warrants of the petitioner.

4. Aforesaid contradictions were duly taken note of by my learned Brother Kuldeep Tiwari, J. (as he then was seized of the matter) and while issuing notice of motion on 03.01.2023, summed up the controversy in the following terms:

“By filing the present petition, the petitioner has challenged the order dated 15.12.2022 passed by the learned Trial Court, whereby fresh non-bailable warrants have been issued against the petitioner in case FIR No.341 dated 21.12.2020, registered under Sections 323/325/34/201/294 of IPC, at Police Station B-Division, Amritsar.

Earlier also, the petitioner had approached this Court by filing two petitions, being CRM-M-57965-2022 & CRM-M-58405-2022, assailing the order dated 19.11.2022, vide which his bail was cancelled and surety bonds in the form of FDRs were forfeited, as well as for grant of anticipatory bail. A Coordinate Bench of this Court, vide order dated 14.12.2022, disposed off the matter with the directions that in case, the Trial Court chooses to grant the concession of bail to the petitioner, the FDRs, which were ordered to be forfeited, be released.

The relevant extract of the order dated 14.12.2022, passed by this Court, reads as under:

“2. Having heard learned counsel for the petitioner, both the aforesaid petitions are disposed of with a direction that in case the petitioner surrenders before the trial Court by tomorrow i.e. 15.12.2022 and moves an application for grant of regular bail, the trial Court shall consider the same expeditiously while taking into account the observations made in concluding paragraph of judgment passed by this Court in CRM-M-39172 of 2021 titled Pawan Kumar Vs. State of

Haryana and another decided on 21.09.2021, which reads as under: "12. Before parting with this order, it needs to be added that this Court cannot lose sight of the fact that there would be certain cases where an accused is unable to appear before the trial Court on account of genuine reasons, say on account of having noted the date incorrectly or on account of certain reasons which are beyond his control. In such cases, the accused can surrender before the trial Court and it is expected that the trial Courts would take a lenient view in genuine cases and decide the regular bail application expeditiously. In a given set of circumstances where the trial Court is satisfied that there were valid reasons for the absence of an accused and that he has surrendered at the shortest possible time, the trial Court can in fact dispose of the regular bail application on the very day the same is presented by accused upon his surrender. The trial Court, in its discretion, may also chose to grant interim bail, in fit cases, but only after surrender of accused."

3. Since the absence of the petitioner on 19.11.2022 is stated to be the first instance of default on his part and the petitioner is a young boy pursuing C.A., the trial Court is expected to take a lenient view in the matter.

4. It is, however, directed that in case the trial Court chooses to grant bail to the petitioner, then FDRs, which were ordered to be forfeited, be released."

In compliance of the aforesaid direction dated 14.12.2022 passed by this Court, the petitioner put in appearance before the learned Trial Court on 15.12.2022 and the learned Trial Court granted him bail, subject to his furnishing bail bonds and surety bonds to the tune of Rs.1,00,000/- with one surety. Surprisingly, despite very clear direction from this Court to release the FDRs in the event of granting bail to the petitioner, the learned Trial Court has specifically observed in its order that "With regard to the bail bonds in the shape of FDR, the Hon'ble Punjab & Haryana High Court, Chandigarh be released of the same." This observation of the learned Trial Court is contradictory to the direction issued by this Court on 14.12.2022.

The learned Trial Court further passed another impugned erroneous order of the same date showing the petitioner absent on 15.12.2022 and issued fresh nonailable warrants against him. Once, the petitioner was present before the learned Trial Court on 15.12.2022 and filed his bail application and was even granted the relief of bail by the very same Court, there was no occasion for the Trial Court to issue fresh nonailable warrants against him showing him absent.

Notice of motion for 27.01.2023.

In the meanwhile, the operation of the order dated 15.12.2022, issuing fresh nonailable warrants against the petitioner, shall remain stayed.

Let a copy of this order be sent to the learned Trial Court for its strict compliance."

5. Pursuant to the aforesaid, learned Judicial Magistrate First Class, Amritsar submitted compliance report dated 20.01.2023 as under:

"3. At 3.00 PM, the surrender-cum-bail application of Sajan Sharma was received having a separate registration no. BA/3115/2022 alongwith the order dated 14.12.2022 passed by the Hon'ble Punjab & Haryana High Court, Chandigarh in CRM-M-57965-2022 (O&M) and CRM-M-58405-

2022 (O&M). In compliance of the said order immediately, the accused was ordered to be released on furnishing of his bail bonds in the sum of Rs.1 Lac along with one surety in the like amount but the accused failed to furnish the bail bonds.

4. It is humbly submitted that since, both the files were registered separately, the bail order passed' in BA/3115/2022 was not reflected in the main file.

5. It is submitted that the mistake is completely bonafide and only due to the fact that both the files were registered separately and till the time, the main file "State vs Narinder Sharma & Anr." was adjourned, neither the bail application of accused Sajan Sharma was moved nor the accused surrendered before the court. The time has been duly reflected in the order dated 15.12.2022. (Copy of order enclosed). Moreover, the report of filing branch is there on record showing the time of filing bail application of accused Saian Sharma no. BA/3115/2022 at 11.42 AM on 15.12.2022, but all these facts have not been disclosed by the accused to the Hon'ble High Court. (Copy attached). While disposing off the bail application, Ahlmad was directed to attach the papers with the main file. On 16.12.2022, when the papers of bail application no. BA/3115/2022 were attached with the main file by the Ahlmad and the file was put up, the order of recalling of non bailable warrants of accused Sajan Sharma was passed immediately.(Copy of order enclosed). Also, Ahlmad has reported that till that time, he had not issued non-bailable warrants of the accused Sajan Sharma.

6. It is further humbly submitted here that in the order dated 15.12.2022 passed by the undersigned, due to typographical mistake of the stenographer, word "be" was typed instead of "has ordered" in parano.3, the correct line was "With regard to the bail bonds in the shape of FDRs, the Hon'ble Punjab & Haryana High Court, Chandigarh has ordered release of the same." The mistake being entirely typographical and inadvertent is highly regretted as there was no intention in any manner to disobey the directions of Hon'ble Court. Infact, the order of the Hon'ble High Court, Chandigarh were complied in full spirit.

7. It is further humbly submitted that in compliance of the order dated 03.01.2023 passed by the Hon'ble Punjab & Haryana High Court, Chandigarh, bail bonds in the shape of FDRs belonging to the accused Sajan Sharma have already been ordered to be released. As such, the compliance of the order dated 03.01.2023 passed by the Hon'ble Punjab & Haryana High Court, Chandigarh has been meticulously made. Any inconvenience caused is highly regretted and the undersigned will be more careful in future. The compliance report is hereby submitted."

6. Reverting back to the order impugned herein.

7. Matter was earlier heard on 13.07.2023 by me when following order was passed:-

"I have heard the petitioner in person and also the learned State counsel. After hearing the arguments for some time, I am prima facie of the opinion that the manner in which the proceedings in the court below have been conducted leaves much to be desired. The petitioner who is a young man aged 24 years. He states that he is a qualified chartered accountant and struggling to get employed. His father, the co-accused, is a cancer patient. He states that an application containing counter version of the incident was presented by them to the local police, but they simply declined to receive the same. That apart, it so appears that despite having been

granted interim protection by a co-ordinate bench of this court, presided over by Gurvinder Singh Gill, J. vide his order dated 14.12.2022, the petitioner was still taken into custody on 15.12.2022. He was kept in confinement for 3 nights. It appears that there has been a violation in letter, spirit and intent of this court's order dated 14.12.2022. Pertinently, while the version of the complainant was converted into an FIR, but it appears that the cross version given by the petitioner and his father was simply trashed, to avoid any inquiry into the same by the over compliant local police, obviously to help the complainant whose version was taken as gospel. Even the prosecution seems to be in serious dereliction of duty, as on one hand the discharge application of the petitioner was pending and on the other their emphasis was to have him sent in custody, notwithstanding interim protection granted. The petitioner had moved an application in the court below for his discharge. The court below has been adjourning the same for reply. As an officer of the court, the counsel for the complainant and state in the court below were also expected to apprise the court of the pendency/disposal thereof, before proceeding any further, but seems they deliberately did not.

Before taking any final view in the case and, in the interest of justice, the whole matter needs to be gone into further with reference to entire record/proceedings of the court below arising out of the FIR registered against the petitioner and his father. Accordingly, it is directed that the entire record/proceedings of the court below arising out of the FIR giving rise to this petition be requisitioned for 24.07.2023. The complainant, the concerned investigating officer and the Commissioner of Police Amritsar shall also remain present on that day.

In the meantime, there shall be a stay of further proceedings in the court below in the case arising out of the FIR giving rise to this petition.”

8. *Apropos, on resumed hearing today, petitioner, complainant, his son and Commissioner of Police, Amritsar had caused appearance in the Court in pre-lunch session and following order was passed-*

“In compliance of order dated 13.07.2023, parties are present in person, along with Commissioner of Police, Amritsar City.

Affidavit of Commissioner of Police, Amritsar, on behalf of respondent No.1 has been tendered in course of hearing, which is taken on record.

After hearing for some time, both the parties state that they are not interested to press charges against each other.

Being so, matter is being sent to Mediation and Conciliation Centre of this Court for recording of their respective statements.

To come up post lunch session.

Presence of Commissioner of Police, Amritsar is exempted.”

9. Matter has been taken up after lunch and it transpires that mediation talks have failed.

10. My attention has been drawn to an order dated 16.01.2023 passed in CRWP-441-2023 by this Court presided over by Gurvinder Singh Gill, J. wherein legality of earlier detention of the petitioner was gone into in a petition filed by the petitioner

CRM-M-18-2023 (O&M)

herein seeking damages etc. claiming that he was illegally taken in custody. Vide detailed order *ibid*, my learned Brother Judge did not find any merit in the claim of the petitioner and dismissed the aforesaid petition. Judicial propriety therefore, does not permit me to relook into the same matter. Accordingly, petition herein is being confined only with regard to legality of non-bailable warrants issued against the petitioner.

11. It transpires that on one hand, bail was granted to the petitioner by learned trial Court vide order dated 15.12.2022 while on other hand, on same day, non-bailable warrants were issued against him. Learned trial Court ought not to have ordered issuance of fresh non-bailable warrants as there was no occasion for learned trial Court to do so by showing the petitioner absent. Compliance report/explanation dated 20.01.2023 *ibid* of learned Judicial Magistrate First Class, Amritsar also indicates the above position.

12. In the facts and circumstances of the present case, impugned order dated 15.12.2022 (Annexure P-6) whereby fresh non-bailable warrant was issued against the petitioner, is quashed. It is made clear that since earlier bail was granted against an FDR of Rs.30,000/- as a collateral security, bail bonds/ surety bonds to the tune of Rs.1 lakh which were asked for vide order dated 15.12.2022 (Annexure P-3) while admitting the petitioner on bail is also reduced to Rs.30,000/- as before and balance of Rs.70,000/- be refunded to the petitioner on an application filed by him before learned Court below. Earlier bail bonds amounting to Rs.30,000/- be also released forthwith, if not released yet, as is being claimed by petitioner today. Petitioner is directed to join proceedings before learned trial Court within four weeks from today and shall continue to appear before learned trial Court as and when required.

13. Petition is accordingly allowed.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 24, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No