

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

(231)

**CRR-150-2023 (O&M)
Date of Decision: 24.01.2023**

Bir Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ajay Vijarania, Advocate, for the appellant.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARKESH MANUJA, J.(ORAL)

By way of present petition, challenge has been made to an order dated 19.12.2022, passed by the Court of Additional Sessions Judge, Charkhi Dadri, whereby, the concession of regular bail granted in favour of petitioner vide previous order dated 16.08.2022 has been recalled on the ground of alleged misrepresentation on the part of the petitioner.

A short reply by way of affidavit of Mr. Desh Raj, DSP, Badhra, District Charkhi Dadri, has been filed in Court today, the same is taken on record.

The facts of the case are that having been implicated in case FIR No.178 dated 11.07.2022 passed by the Court of Additional Sessions Judge, Charkhi-Dadri, the petitioner was granted concession of regular bail by the Additional Sessions Judge, Charkhi-Dadri, vide order dated 16.08.2022 by recording a reasoned order. Para-7 thereof is reproduced hereunder:

“7. After hearing rival submissions, it has come on record that applicant/accused is in custody in this case since 11.07.2020. Investigation of the case has already completed by submission of challan on 29.09.2020. After framing of charges on 24.03.2021, five

prosecution witnesses have so far been examined out of total 23 prosecution witnesses. Prosecution has already availed five effective opportunities, but could not conclude the evidence. It will take sufficient time to conclude the evidence of prosecution and accused Bir Singh, who was merely driving the motorcycle, cannot be kept confined for indefinite time when contraband was not in his direct possession as same was being carried in the hand of pillion-rider/co-accused Sukhbir. Prosecution has opposed the bail application of applicant/accused on the ground that the arrest of one Pardeep, brother of co-accused Parveen (alleged supplier), is still pending, but the prosecution has failed to show at this stage that how the applicant/accused will be helpful in searching the brother of co-accused Parveen. Co-accused Parveen is also running in custody. As per reply, no other criminal case of any nature has been reported as ever got registered against the petitioner-accused. Conclusion of trial will take time and no useful purpose will be served by detaining the petitioner-accused in custody for further indefinite period after his already more than two years incarceration.”

In pursuance to the aforesaid order, the petitioner was released on bail on furnishing of his bail bonds/surety bonds, however, an application came to be filed at the instance of prosecution for seeking cancellation of regular bail granted vide order dated 16.08.2022. The aforesaid application was filed before the Court of Additional Sessions Judge, Charkhi-Dadri on 24.08.2022 and the same was allowed vide order dated 19.12.2022 by recording that while disposing of the bail application filed at the instance of petitioner herein on 16.08.2022, the learned Court was misled at the instance of the petitioner. Paragraphs No.7 and 8 of the order dated 19.12.2022 are reproduced hereunder for reference:

“7. After hearing rival contentions of both the sides, this court has perused minutely the record of regular bail application filed by accused Bir Singh on 12.08.2022 and decided vide order dated 16.08.2022 titled as ‘Bir Singh Vs State’ (CIS No.BA/476/2022)(CNRNo.HRBHA200-4193-2022). This was the second application, seeking grant of regular bail as first regular bail

application moved by the accused Bir Singh, bearing CIS No.BA/19/2021, was already dismissed on merits vide order dated 18.01.2021. Thereafter, respondent/accused approached before Hon'ble High Court and filed CRM No.584-2022, but same was dismissed as withdrawn vide order dated 10.03.2022. During arguments on bail application, bearing CIS No.BA/476/2022, decided on 16.08.2022, learned counsel for the respondent/accused submitted that nothing was recovered from the respondent/accused as he was not present at the time of occurrence. Nothing incriminating has been recovered from his possession. It misled the court whereas in fact respondent/accused was driving the motorcycle at the relevance time, which was used in transporting above-mentioned narcotic contraband. The recovered quantity of narcotic contraband falls under commercial quantity. Besides this, Investigating Officer and other material witnesses are left to be examined in this case whereas it was argued by learned defence counsel that all the material witnesses have already been examined.

8. Above discussion clearly shows that bail order dated 16.08.2022 has been obtained by misleading the court by taking false plea qua the role of respondent/accused, whereas actually he was very much involved in the illegal trade of narcotic contraband and recovery effected from him falls under the category of commercial quantity."

Referring to the aforesaid two orders dated 16.08.2022 and 19.12.2022, learned counsel for the petitioner submits that there has been no misrepresentation on the part of the petitioner at the time of disposal of his bail application by the trial Court on 16.08.2022 as all the necessary facts were brought to the notice of the learned Court below at the instance of petitioner as well as by the prosecution and those were even noticed in the said order. Learned counsel further submits that the reasons now recorded while passing the order dated 19.12.2022 were never made out from the facts available on record and thus, the order dated 19.12.2022 has been impugned in the present petition.

case pertains to heavy recovery of commercial nature which was made from the pillion rider of the motorcycle being driven by the petitioner thereby, he being in conscious possession of the contraband was not entitled for grant of bail.

I have heard learned counsel for the parties and have gone through the paper book. I find substance in the submissions made on behalf of petitioner.

While passing the order dated 16.08.2022, granting benefit of bail in favour of petitioner, learned trial Court passed a well reasoned and speaking order thereby, giving justification in support. The learned trial Court even recorded that at the time of alleged recovery, the petitioner was driving the motorcycle and the contraband was being carried in a bag by the co-accused Sukhbir who was pillion rider, besides, even noticed that there was no other case of similar nature pending against the petitioner and out of 23 prosecution witnesses, only 5 were examined. Even, the custody of 2 years was also one of the considerations which weight upon the mind of trial Court while passing order dated 16.08.2022.

Having perused the order dated 19.12.2022, I do not see any misrepresentation on the part of the petitioner which can be attributed to him at the time of passing of the previous order dated 16.08.2022. In fact a perusal of the order dated 19.12.2022 appears to be based on fresh consideration of facts and the material already available on record which to my mind cannot be done in exercise of powers under Section 439(2) Cr.P.C. My aforesaid view can even be derived from the observations made by Hon'ble Supreme Court in case of **Nityanand Rai Vs. State of Bihar and another**, 2005(2) R.C.R. (Criminal) 468. Relevant portion from para-8 is reproduced hereunder:

“(8) Having considered the argument advanced on behalf of the appellant and respondent, we think the High Court was not

justified in considering the application for cancellation of bail as if it was an application for grant of bail. Consideration of an application for grant of bail stands on a different footing than one for cancellation of bail. Grounds for cancellation of bail should be those which arose after the grant of bail and should be referable to the conduct of the accused while on bail, such is not the case made out in application for cancellation of bail.....”.

There is nothing to point out from the records that petitioner did not approach the Court with clean hand while his bail application was being considered and decided by the trial Court on 16.08.2022 or he ever misused the concession ever. Resultantly, finding merits in the present petition, the impugned order dated 19.12.2022 is hereby set aside, restoring the order dated 16.08.2022 passed in favour of the petitioner.

Pending application, if any, stands disposed of.

(HARKESH MANUJA)
JUDGE

24.01.2023
anil

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No