

CRM-M-5216 of 2023

2023:PHHC:038292

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

CRM-M-5216 of 2023

Reserved on: - 23.02.2023

Pronounced on: - 14.03.2023

Major Singh @ Babbu

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. A.S. Khinda, Advocate, for the petitioner.
Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J.

Pursuant to order dated 02.02.2023 passed by this Court, status report dated 22.02.2023 by way of affidavit of Maninder Pal Singh, Deputy Superintendent of Police, Sub-Division, Kapurthala, Jalandhar, has been filed on behalf of respondent-State, which is taken on record.

This petition has been filed by the petitioner under Section 482 Cr.P.C. for modifying order dated 16.11.2022 (Annexure P-4) passed by learned Additional Sessions Judge, Kapurthala, whereby petitioner has been directed to deposit Rs.2 lakhs as fine during the pendency of appeal arising from FIR No.143 dated 07.12.2018 under Section 61/1/14 of the Punjab Excise Act, 1914, registered at Police Station Sadar Kapurthala, District Kapurthala.

Brief facts of the case are that vide judgment of conviction and order of sentence dated 31.10.2022 passed by the Court of learned

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Judicial Magistrate First Class-V, Kapurthala, he was convicted and sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.2,00,000/- under Section 61(1) of the Excise Act and in default of payment of fine to further undergo simple imprisonment for three months. Aggrieved against the judgment of conviction and order of sentence of the trial Court, petitioner preferred appeal before the appellate Court. Learned Additional Sessions Judge, Kapurthala, has suspended the sentence of the petitioner vide order dated 16.11.2022 subject to deposit fine amount of Rs.2,00,000/- before the trial Court.

Learned counsel for the petitioner contended that condition for deposit of fine amount for suspension of sentence imposed by the appellate Court is against the law. Even provision under Section 389 Cr.P.C. does not permit imposition of such a condition in the event of release of a convict. He further submitted that condition of depositing fine as a pre-condition for suspension of sentence is onerous as his appeal is pending and the issue as regards the conviction of the petitioner is still *sub judice*. He further submitted that as a result of inability of the petitioner to deposit the huge amount of fine towards condition of suspension of sentence, he is unable to avail the benefit of order. He further submitted that it is a well-settled position of law that a Court should not impose such onerous conditions as are likely to deprive a person of the fruit of the order so passed in his favour.

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Learned State counsel supported the impugned order passed by the appellate Court submitting that it had not committed any error in directing the petitioner to deposit the fine amount awarded by the trial Court as a pre-condition for suspension of his sentence. He further submitted that condition so imposed upon the petitioner cannot be said to be harsh and onerous and the petitioner having indulged in the case under the Excise Act, imposition of such condition cannot be held to be bad.

I have heard learned counsel for the parties and perused the record.

Upon hearing the counsel for the respective parties, I am of the opinion that since the appeal of the petitioner is pending and the culpability of the offence is yet to be determined by the Court, therefore, any such onerous condition, as is likely to deprive the accused of the benefit of the order granting suspension of sentence, should not normally be imposed by a Court while granting a benefit. The mere fact that the petitioner has not been able to avail the suspension of sentence despite the order passed in his favour on 16.11.2022, establishes that the condition is harsh and onerous on the petitioner.

In view of the above, the instant petition is allowed and the order dated 16.11.2022 passed by the Additional Sessions Judge, Kapurthala, is set aside to the extent whereby the petitioner has been directed to deposit the fine of Rs.2,00,000/- as a pre-condition for

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suspension of sentence. The rest of the conditions as imposed by the learned Additional Sessions Judge, Kapurthala, shall remain the same.

14.03.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No