

CRM-M-42983-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42983-2023
Reserved on: 19.10.2023
Pronounced on: 20.10.2023

Kuldeepak Mittal ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jagjit Singh Chatrath, Advocate
for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab.

Mr. Shubham Tandon, Advocate and
Ms. Dhivya Jerath, Advocate (through VC)
for respondent No.2.

ANOOP CHITKARA, J.

Criminal Complaint No.	Dated	Police Station	Sections
73/2017	09.11.2017	Chief Judicial Magistrate SAS Nagar Mohali	406, 420, 120-B IPC

1. Seeking cancellation of bail granted to respondent No.2-J.S. Bajwa, the petitioner has come up before this Court under 439(2) CrPC, on the ground that he has mis-lead the Court by making wrong statement that co-accused has been acquitted.

2. Vide order dated 31.10.2022 passed in CRM-M-50259-2022, this Court had granted protection to respondent No.2, subject to his surrendering before the concerned trial Court. Para 6 of the said order reads as follows:-

6. The petitioner is directed to surrender before the concerned court on or before November 15, 2022. Since the co-accused who had faced the trial, have already been acquitted, as such on appearance, the concerned court shall release the petitioner on bail on the same day, subject to furnishing bail bonds to its satisfaction and imposing reasonable conditions as it may deem appropriate in the background of the accused's conduct. The petitioner is to execute a bond for attendance

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in the concerned court. On the reverse page of personal bonds, the petitioner shall mention the permanent address, the address where the petitioner generally resides, the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court. The bail bonds shall remain in force throughout the trial and in Section 437-A of the Cr.P.C. if not canceled due to non-appearance or breach of conditions.

3. Stand of the present petitioner (complainant) is that the accused had misrepresented before this Court by wrongly stating that co-accused who had faced the trial had already been acquitted.

4. The concerned DySP filed its reply dated 13.10.2023 and in para 6 of the said reply, it is specifically stated that the accused has mis-lead this Court by wrongly submitting that co-accused who had faced the trial, had already been acquitted, but in fact the trial stands still because non-appearance of the accused for five years.

5. Counsel appearing for respondent No.2 could not show a single document to establish the statement made in the Court while securing protection on the grounds that co-accused who had faced the trial, was already acquitted.

6. Since the primary consideration for this Court is to grant relief to the petitioner in the order dated 31.10.2022 passed in CRM-M-50259-2022 a petition u/s 482 CrPC. The fact since other accused have already been acquitted, there was no purpose of sending the petitioner behind bars despite his not appearing before the trial Court and only purpose was to secure his presence before trial Court. It is unfortunate that the accused gave wrong instructions to his counsel and the counsel based on such wrong and untruthful instructions conveyed the same to this Court. Although scope of interference of Section 439(2) is very limited as petitioner should resort to 482 read with 362 CrPC but this is a fit case where the accused had got protection by mis-representing before this Court and by making this Court forming opinion because of the acquittal.

7. Thus, in the entirety of facts and circumstances, present petition filed by the complainant, is disposed of and order dated 31.10.2022 which was on erroneous facts/submission, stands recalled. Protection granted to respondent No.2 vide order dated 31.10.2022 passed in CRM-M-50259-2022, is set aside. It is clarified that it shall be permissible for respondent No.2 to file regular bail under 439 CrPC and he shall also arraign the petitioner as respondent No.2 in that petition. It is clarified that at the time

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of adjudicating the said petition, observations made in this order shall not come in the way. No coercive steps be taken against respondent No.2 till 20.11.2023, to enable him to avail his legal remedies.

Pending applications, if any, stand disposed of .

(ANOOP CHITKARA)
JUDGE

20.10.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.