

CRM-M-52349 of 2022

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

CRM-M-52349 of 2022
Reserved on: - 23.02.2023
Pronounced on: - 10.03.2023

Kuldeep Singh @ Baba Deep

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Ashish Nagar, Advocate,
for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J.

This petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing impugned order dated 29.10.2022 (Annexure P-5) whereby learned Additional Sessions Judge, SBS Nagar, while admitting criminal appeal CRA-91/2022 put a pre-condition for deposit of Rs.2.00 lakhs as fine for suspension of sentence awarded by the trial Court vide judgment of conviction and order of sentence dated 24.08.2022 in case FIR No.09 dated 22.01.2017 under Section 61 of the Punjab Excise Act, 1914, registered at Police Station Nawanshahr.

Brief facts of the case are that on the basis of secret information received by the police, FIR No.09 dated 22.01.2017 under Section 61 of the Punjab Excise Act, 1914 was registered against the

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petitioner at Police Station Nawanshahr for recovery of 36 bottles of liquor make Club King XXX Rum (each measuring 750 mls.) and 60 bottles of liquor make First Choice Whiskey (each measuring 750 mls.). Vide judgment of conviction and order of sentence dated 24.08.2022 passed by the Court of learned Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar, he was convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,00,000/- for commission of offence under Section 61(1)(vi) of the Punjab Excise Act and in default of payment of fine to further undergo simple imprisonment for a period of six 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, SBS Nagar, while admitting the appeal suspended the sentence of the petitioner vide order dated 23.09.2022. Vide subsequent separate order dated 23.09.2022, petitioner was directed to deposit fine amount of Rs.2,00,000/- as a pre-condition for suspension of sentence by learned Additional Sessions Judge, SBS Nagar.

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

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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.

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 post-admission 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

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23.09.2022, 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 29.10.2022 passed by the Additional Sessions Judge, SBS Nagar 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 suspension of sentence. The rest of the conditions as imposed by the learned Additional Sessions Judge, SBS Nagar shall remain the same.

10.03.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No