

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-1380 of 2023

Date of Decision:06.12.2023

Mouvish Bains

....Appellant

Versus

State of Punjab

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

HON'BLE MS. JUSTICE SUDEEPTI SHARMA

Present : Mr. Nikhil Ghai, Advocate,
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

Ms. Himani, Advocate, for
Mr. Chandan Singh Rana, Advocate,
for the complainant.

SURESHWAR THAKUR, J. (Oral)

1. The facts relevant for deciding the relevant instant appeal, are, that FIR bearing No. 66 of 12.04.2022, embodying therein offences constituted under Sections 307/341/323/427/506/148/149/34 IPC, and, under Section 25 and 27 of the Arms Act and Section 13 of the UAPA Act, 1967 (added lateron), became registered with Police Station Tibba, District Ludhiana.

2. Before the appellant accessing this Court, he had earlier instituted bail application under Section 439 Cr.P.C., before the learned Additional Sessions Judge, Ludhiana, who, had declined bail to the petitioner

through its making an order on 10.10.2023, in bail application, bearing No. 20929 of 2023.

3. On the other hand, the bail applicant one Chetan, had also prior hereto, thus instituted bail application No. 22292 of 2022, before the Additional Sessions Judge, Ludhiana, whereons a verdict of dismissal was made on 02.11.2022.

4. This Court through an order made on 04.10.2023, had made the hereinafter extracted direction(s), upon, the learned State counsel.

“ 1. As prayed for by the learned State counsel, detailed affidavit be filed disclosing therein whether in the final report drawn under Section 173 Cr.P.C., an offence embodied under the UAPA has been included in the said report..... ”

5. Moreover, through an order made on 20.10.2023, order whereof is extracted hereinafter, this Court had directed the Commissioner of Police, Ludhiana, to record his personal appearance before this Court.

“ 1. As prayed for, by the learned State counsel, a further period of two weeks is granted for complying with the order made by this Court, on 04.10.2023. 2. On the subsequent date of hearing, the Commissioner of Police, Ludhiana, shall record his personal appearance before this Court..... ”

6. The reason for the above orders becoming passed, by this Court, became sparked from the factum, that though in the FIR (supra), an offence under Section 13 of UAPA Act, became initially included, but subsequently, in the charge-sheet drawn and filed, before the learned trial Judge concerned,

by the investigating officer concerned, therein became excluded, the offences embodied under the relevant provisions of UAPA Act.

7. Short reply, on affidavit, to the petition has been filed by the Commissioner of Police, Ludhiana. A reading of the reply on affidavit discloses, that in the instant FIR, the offence under Section 13 of the UAPA Act, was added later on, thus on the ground, that during investigations, it was revealed, that the accused namely Pankaj Rajput and Chetan Sehdev, rather had created a gang, whereby they indulged into fights with the public and, as such, there was panic and fear in the society.

8. Be that as it may, it is also been mentioned in the reply, on affidavit, that during investigation(s) being carried into the petition FIR, the said investigation(s) revealed, that the provisions of Section 13 of the UAPA Act rather were not liable to be embodied in the said FIR.

9. Moreover, in the final report which became instituted under Section 173 Cr.P.C., before the learned trial Judge concerned, therein too, since the offences under the UAPA, were not revealed to be committed by the present petitioner(s), as such, the said provisions, as carried in the UAPA, thus were ordered to be deleted vide DDR No. 12 of 23.06.2022.

10. Therefore, in the final report the offences embodied under the UAPA Act, were not included therein. The consequence thereof, is that, the stringency of the provisions of the said Act, whereby the present petitioner, may become precluded to claim the facility of regular bail from this Court, do thereby become eased. Resultantly, this Court may become constrained, unless there is evidence on record revealing, that the present bail petitioner,

was not co-operating with the relevant investigation(s) and/or was tampering with the prosecution evidence, to thus allow him being released from judicial custody.

11. The reply on status report, does not disclose qua any protest being made by the investigating officer concerned, about the facility of regular bail, being granted to the present petitioner, thus on the ground, that on his becoming released from regular bail, there is every likelihood of his tampering with the prosecution evidence or there being likelihood of his influencing the prosecution witnesses concerned.

12. Therefore, in the wake of conclusion of investigation(s) into the petition-FIR, besides the factum of the prolonged judicial incarceration of the present petitioner, this Court may become constrained to allow the present appeal.

13. However, it is also revealed in the custody certificate, furnished to the present appeal, that insofar as, the appellant is concerned, there are also the hereafter extracted FIRs, thus registered against him.

1) FIR No. 177 dated 12.11.2021 under Sections 25-54-59 of the Arms Act, Police Station Doraha, 2) FIR No. 30 dated 25.02.2022 under Section 379B, 34 IPC, 25-54-59 of the Arms Act Police Station Division No.8, District Ludhiana, 3) FIR No. 88 dated 08.05.2022 under Section 307, 452, 427, 506, 148, 149 IPC, and 25-54-59 of the Arms Act, Police Station Tibba, District Ludhiana, 4) FIR No. 58 dated 21.06.2023 under Section 307, 148, 149, 506 IPC, Police Station Division No.4, District Ludhiana.

14. It is on the above ground, that the learned State counsel submits,

that since the present bail appellant is habitual offender, thereupon there is every likelihood of his re-indulging in crime events. However, the repeated indulgences of the present bail appellant in crime, does not yet preclude this Court, from enlarging him on regular bail, as the imposition of the hereafter onerous conditions upon him, rather would ensure that hereafter, he does not disturb public order, through his re-indulging in crime.

15. Therefore, in the wake of the imposition of hereafter onerous conditions upon the present appellant, the factum of his repeatedly indulging in crimes would rather become eased and consequently this Court would become facilitated to enlarge him on regular bail.

16. In consequence, the present appeal is allowed and the present appellant, unless he is not required in some other case and/or if he has yet not been ordered to be released, on bail, through orders becoming made by jurisdictionally competent Courts, in respect of the FIRs (supra), as became registered against him, thereupon, he is ordered to be released from custody in respect of the appeal-FIR, but only subject to the imposition of the hereafter extracted conditions.

1) That the present appellant shall furnish personal and surety bonds in a sum of Rs. 1 Lakh, to the satisfaction of the learned Judicial Magistrate concerned.

2) That he shall give an undertaking before the learned Judicial Magistrate concerned, that he shall not influence prosecution witnesses nor shall he tamper with the prosecution evidence.

3) That he shall make an undertaking before the learned trial Magistrate, that in the event of his re-indulging in crime event(s), thereupon, the grant of regular bail to him, through orders made by this Court, shall be deemed to be ipso facto rescinded, without any further reference being made

to this Court.

4) That the passports, if any, held by the present appellant shall become forthwith deposited by him with the SHO of the jurisdictional Police Station concerned.

17. The reason for this Court making the hereinabove direction(s) upon the Commissioner of Police concerned, ensued from the factum of the mechanical and perfunctory manner, of the investigating officer(s) concerned, proceeding to include UAPA offences in the present FIR, despite ultimately a conclusion being recorded, that they were not required to be included in the petition-FIR. The above mechanical and perfunctory manner of inclusion of offences under the UAPA Act, in the petition FIR, does ultimately cause deep trauma, upon the minds of the presnet appellant, as the stringency and the exacting rigor, of the relevant provision of the UAPA Act, do thereby prima facie, forbid him, to claim the facility of bail from the Courts of Law.

18. The non-application of mind by the investigating officer concerned, to yet include offences under the UAPA Act, against the present appellant in the present FIR, is thus, required to be curbed.

19. Therefore, in the above regard, certain direction(s) are required to be passed upon the Police Commissioners of the Police District concerned, besides, upon the Superintendents of Police of the Police Districts concerned.

20. In consequence, this Court deems it fit and appropriate to make the hereafter direction(s), upon the above, so as to ensure, that a dire and circumspect application of mind, thus, is made by the investigating officer concerned, in regard to his making a contemplation vis-à-vis the inclusion of

offences in the UAPA Act, in the FIRs concerned.

21. In consequence, it is ordered hereafter that :

1) The (supra) shall ensure that they shall on a day-today basis monitor the investigation(s), which are conducted in respect of the FIRs concerned, wherein, the investigating officer concerned, after collecting the relevant incriminatory material against the accused concerned, is intending to include therein offences under the UAPA Act.

2) After a close scrutiny, thus on a day-to-day monitoring of the investigation(s) being done by the investigating officers concerned, especially when the investigating officers concerned, deem it fit to include therein offences embodied, under, the UAPA Act, thereupon the (supra), shall after making a closest application of mind to the incriminatory material, as becomes collected by the investigating officer, thus shall ensure whether there is any necessity of inclusion or exclusion of offences embodied under the UAPA Act, thus in the relevant FIR.

3) That in case there is dereliction of duty on the part of the (supra), thereupon the Director General of Police, Punjab, shall ensure, that even with respect to the (supra), appropriate action in accordance with law, is recommended to be made.

22. A copy of this verdict be forthwith transmitted to the Director General of Police, Punjab, so that they are subsequently forwarded for strict compliance thereto being made by the (Supra).

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 06, 2023

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	Whether reportable	:	Yes/No