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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.241

CRM-M-48507-2024 (O&M)

Reserved on : 04.10.2024

Pronounced on : 18.10.2024

Ajay Sehgal

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. R.S. Rai, Senior Advocate with
Mr. Karan Pathak, Advocate and
Mr. Farhad Kohli, Advocate, for the petitioner.

Mr. Gurpartap S. Bhullar, AAG, Punjab.

Mr. C.S. Bagri, Advocate, for the complainant.

KIRTI SINGH, J.

1. The jurisdiction of this Court has been invoked under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking quashing and setting aside of the order dated 18.09.2024 passed by the learned Addl. Sessions Judge, SAS Nagar, Mohali in CIS No.CRR-129-2024 (Annexure P3) vide which the order dated 30.07.2024 passed by the learned Judicial Magistrate 1st Class, Kharar (Annexure P2) regular bail granted to the petitioner in case FIR No.0123 dated 19.11.2022 (Annexure P1), registered at Police Station Mullanpur, District SAS Nagar, Mohali, under Sections 406, 420, 467, 468, 471, 472 and 120-B IPC has been set aside.

2. The facts in brief are that initially a letter No.

4720/5A/SP/Investigation/SAS Nagar dated 19.11.2022 was written by

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SP (Investigation) to SSP, SAS Nagar regarding letter No.9036/CR/LA-1 dated 18.11.2022, received from the Director Bureau of Investigation Punjab, Chandigarh and letter No.7691/SSP/SAS Nagar dated 19.11.2022 regarding CWP-9767 of 2022 titled 'Bahadur Singh and others Vs. State of Punjab and others' and complaint No.709/PC/SSP dated 26.02.2020, 1580/Spl./SAS Nagar dated 24.11.2020, moved by Karamjit Singh son of Ajaib Singh.

2.1 That the complainant in the FIR, namely, Karamjit Singh had moved a complaint bearing No.709/P/SSP dated 26.02.2020 before the SSP, SAS Nagar against Suresh Kumar, President of Indian Cooperative Housing Building Society (ICHBS) and against other officiating members of the ICHBS and also against one Manvinder Singh, Notary Public.

2.2 Thereafter, another complaint No.1580/Spl./SSP dated 24.11.2020 was moved by the complainant as well as other land owners. In both the above said complaints, land owners had requested for taking legal actions against officiating members of the ICBHS i.e Suresh Kumar Bajaj (President), Ashish Kamra (Deputy President), Ajay Sehgal (Secretary), Rajesh Girdhar (Secretary), alleging that officiating members of ICBHS, in connivance with each other, have got a Change of Land Use (CLU) certificate on the strength of purportedly bogus consent letters of land owners, so that after receiving approval with regard to the aforesaid colony, from GMADA, they may be able to further sell the land of the complainant/land owners.

2.3 The inquiry of the aforesaid complaint was conducted by Sh. Harmandeep Singh Hans (IPS), SP (Investigation), SAS Nagar and

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subsequently, a report (Inquiry Report) was sent to the SSP, SAS Nagar vide letter No.180/5/S/SP (Investigation) dated 25.11.2020. From the perusal of the inquiry report, it purportedly emerged that the complainant had total land measuring 53 Kanals 18 Marlas in village Palheri, Hadbast No.173, Tehsil Kharar comprising in Khewat No.119/115, Khatoni no. 122, Khasra no. 17//16(8-0), 17//17(6-14), 17//18 (15-16), 17//23 (7-6), 17//24(5-8), 17//25(7-16), 17//31(0-17), 28//7(8-0), 28//14(4- 1). It has been opined in the inquiry report, in regard to the above land of the complainant, that the officiating members of the ICHBS-Suresh Kumar Bajaj and others, had purportedly prepared a bogus consent letter of the complainant/land owners, for obtaining a CLU certificate, without getting any consent of the complainant and the aforesaid consent letter was allegedly prepared by putting forged signatures of the complainant. It was purportedly found that the forged signatures and thumb impression of 14 other people were obtained by the abovesaid members of the ICHBS, concerning the land of the complainant, for getting CLU Certificate without his consent. The consent letter was purportedly prepared in 2014. Therefore, the abovestated FIR was registered.

2.4 Thereafter, the inquiry report was sent by the SSP, SAS Nagar to DDA Legal for obtaining a legal opinion. Thereupon, DDA (Legal), SAS Nagar vide letter No.08/D.D.A (Legal) dated 09.01.2021, raised certain objections with regard to the inquiry report, which read as follows: -

"I have thoroughly perused the report baring No. 180/5S/SP (Investigation) dated 25.11.2020 given by the investigating officer S.P., S.A.S. Nagar along with the

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complaint moved by the complainant, as well as documents and statements. According to my opinion the official of the concerned authority, before which the bogus letter of the complainant was used for obtaining C.L.U. by the opposite party, is required to be associated in the enquiry and attested copy of the said bogus letter is required to be obtained from the said authority and the detailed statement of the said official is required to be recorded so that truth may come to surface and proper legal opinion concerning the above matter may be given".

2.5 Thereafter, the aforesaid complaint was re-inquired by Sh. Bikram Singh Brar (P.P.S.), D.S.P Kharar-2, Mullanpur, District S.A.S. Nagar. However, during the enquiry, the complainant party could not produce original copies of the documents used for obtaining the C.L.U., nor any original copy of these consent letter used for obtaining C.L.U certificate were lying with the GMADA. Therefore, the purported consent letter used for obtaining C.L.U could not be verified and, the D.S.P., vide his office letter No. 404/5/S./D.S.P, Kharar, dated 13.12.2021, sent his enquiry report through the office of S.S.P., S.A.S Nagar to the D.D.A (Legal) for obtaining legal opinion. Thereupon, Shri Sanjeev Batra, District Attorney (P) S.A.S. Nagar vide his office letter No. 2482/D.A/ S.A.S. Nagar dated 15.12.2021 opined that "no fact has come on surface for grabbing land of the land owners/ complainants with *malafide* intention by the society or its officiating members as even today they are ready to pay the excellent market price to the land owners/complaints. So according to my opinion no *prima facie* case

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requiring interference in this matter is found to be made out against the abovesaid Society and its officiating members".

2.6 The DDA (Legal) S.A.S. Nagar then recommended to consign (file) the above complaints moved by the complainant and others to the record room. On the basis of the above legal opinion, the then SSP got these complaints consigned as infructuous.

2.7 The enquiry of the above complainants was conducted by different officers since 2020. The then S.P. (Investigation) District S.A.S. Nagar had written to the SHO, Police Station Mullanpur for registration of the FIR against the officiating members of the ICHBS Suresh Kumar Bajaj (President), Ashish Kamra (Deputy President), Ajay Sehgal (Secretary), Rajesh Girdhar (Secretary) for committing fraud upon the complainant party. However, upon the enquiry of these complaints, the DDA Legal, District S.A.S. Nagar had raised objections and recommended that original copies of the documents of the bogus consent letters be verified from F.S.L., Phase-IV, Mohali, and further asked for joining the official of the concerned authority who had issued the said documents. However, no compliance was made regarding the above objections raised by the D.D.A. (Legal) S.A.S. Nagar. Since the original documents of the purportedly bogus consent letters of the complainants were not received from any department or from the opposite party; no verification of the signatures on the purportedly bogus documents pertaining to the consent letters, could be made, and therefore the above complaints were consigned.

2.8 Thereafter, a FIR was registered on 19.11.2022 and on 11.07.2024, the petitioner was arrested in the present FIR. Subsequently,

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vide order dated 30.07.2024 Ld. JMIC, Kharar, granted regular bail to the petitioner.

2.9 The bail order was assailed by the complainant by way of a revision before the Ld. Additional Sessions Judge, SAS Nagar Mohali, which has been decided vide the impugned order dated 18.09.2024.

3. Learned senior counsel has argued that a revision petition against the order granting regular bail by the learned Magistrate is not maintainable before the learned Sessions Court and has placed reliance upon **Amar Nath and others Vs. State of Haryana and another (1977) 4 SCC 137, Lakhwinder Singh Vs. Lovepreet and another (CRR-364-2022, decided on 03.08.2022) and Shakti Kumar Vs. State of Haryana and another (CRR-2664-2023, decided on 20.11.2023).**

4. *Per contra*, Mr. C.S. Bagri, Advocate appearing on behalf of the complainant has opposed the prayer made by learned senior counsel for the petitioner and has placed reliance upon **Subh Karan Vs. State of H.P. (Cr.MMO Nos.20, 21, 22 & 23 of 2015 decided on 06.02.2015), Qamaruddin Vs. R.P. Sharma 1989 (2) RCR (Crl.) 704, Nalla Thamby Sritharan Vs. Uma Shankar 1990 (3) RCR (Crl.) 593 and Bodh Raj Vs. State of Haryana (CRR-617-1991, decided on 22.04.1993)**

5. Heard the rival submissions made by the learned counsel for the parties.

6. Without commenting upon the merits of the case, the short point raised before this Court is whether a revision petition would be maintainable against the order granting bail in view of the fact that the order is an interlocutory order against which no revision would lie.

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7. It would be apposite to refer to the relevant provisions of Section 438 BNSS which reads as under:-

"438. (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

Explanation.- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

(Emphasis Supplied)

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8. A clear reading of the provisions of Section 438(2) BNSS is clearly indicative of the fact that interlocutory order is not revisable under Section 438 BNSS.

9. Further, the Hon'ble Supreme Court in **Rajendra Rajoriya Vs. Jagat Narain Thapak (2018) 17 SCC 234** has held as under:-

“6. Let us now proceed to interpret the provisions of Section 397 against the historical background of these facts. Sub-section (2) of Section 397 of the 1973 Code may be extracted thus:-

“The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, Inquiry, trial or other proceeding.”

The main question which falls for determination in this appeal is as to what is the connotation of the term "interlocutory order" as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the

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term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

10. That similar issue regarding maintainability of the revision petition against the order granting bail was considered by a Coordinate Bench of this Court in **Lakhwinder Singh Vs. Lovepreet and another (CRR-364-2022, decided on 03.03.2022)**, where it was held that the order

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granting bail, is an interlocutory order and hence, revision petition against the same is not maintainable.

However, interpreting the provisions of sub-section (2) of Section 397 of the Code (now Section 438 of BNSS), the Supreme Court in **Amar Nath and others Vs. State of Haryana and another (1977) 4 SCC 137** has held as under:-

"6.....It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad and artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code....."

11. It is trite law that an order granting regular bail is an interlocutory order and therefore, no revision petition is maintainable against the same under Section 438(2) BNSS. Therefore, a revisional order against

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the bail order which has been decided vide the impugned order is not maintainable. Since as per Section 438 BNSS, the power of revision conferred by sub-section 1 of Section 438 BNSS is not to be exercised in relation to any interlocutory order passed in any appeal, trial or other proceedings.

12. In view of above, the present petition is allowed and order dated 18.09.2024 passed by the learned Addl. Sessions Judge, SAS Nagar, Mohali in CIS No.CRR-129-2024 (Annexure P3) vide which the order dated 30.07.2024 passed by the learned Judicial Magistrate 1st Class, Kharar (Annexure P2) regular bail granted to the petitioner in case FIR No.0123 dated 19.11.2022 (Annexure P1), was set aside and bail granted to the petitioner was cancelled, is hereby by quashed.

13. Nothing stated hereinabove shall be construed to be an expression of an opinion on the merit of the case. This will not bar the respondents from taking recourse of the remedy available to them in accordance with law.

(KIRTI SINGH)
JUDGE

18.10.2024
Ramandeep Singh

Whether speaking / reasoned	Yes
Whether Reportable	No