

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

CRM-M No.11138 of 2025 (O&M)

Date of decision: 06.03.2025

Abhishek @ Chhabi

... Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

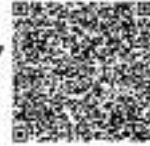
Present: Mr. Priyavrat Parashar, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana for the respondent.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for setting aside the impugned bail condition/observation (if the applicant-accused is found indulged in any such case of similar nature, in future, the prosecution will be at liberty to seek the cancellation of bail), imposed vide order dated 04.01.2024 (P-2), passed by learned Special Court, Kaithal, while granting bail pending trial to the petitioner in FIR No.512 dated 27.11.2023 (P-1), under Sections 21(b) & 29 of the Narcotic Drugs and Psychotropic

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Substances Act, 1985 (*for short* 'NDPS'), registered at Police Station Kaithal City, District Kaithal, along with impugned order dated 15.02.2025 (P-7), whereby bail pending trial, granted to the petitioner, has been rejected.

(2) Briefly allegations are that:-

(2.1) Petitioner was arrested in the aforesaid FIR on 01.12.2023; but he was granted bail pending trial by learned Special Court, vide order dated 04.01.2024 (P-2).

(2.2) Later on, prosecution moved an application (P-3) for cancellation of order dated 04.01.2024 (*supra*) on the ground that he is found involved in two other cases under the NDPS Act i.e. FIR No.269 dated 25.06.2024, under Section 21(b) of the NDPS Act, Police Station Civil Line, Kaithal & FIR No.445 dated 09.11.2024, under Sections 21(b) & 29 of the NDPS Act, Police Station City, Kaithal.

(2.3) Learned Special Court accepted the application of prosecution and cancelled the bail of petitioner, while passing the impugned order. Hence, present petition.

(3) Learned Counsel for the petitioner contends that learned Special Court cancelled the bail without there being any valid reason. Further contends that condition, imposed by learned Special Court, while granting bail vide order dated 04.01.2024 to the effect that "if the applicant-accused is found indulged in any such case of similar nature, in future, the

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prosecution will be at liberty to seek the cancellation of bail” is not legally impermissible in law and reference in this regard has been made to judgment dated 21.12.2023 of the Coordinate Bench in “**Rajiya Versus State of Haryana**, passed in **CM-M-35903-2023**. Also contends that in both the subsequent FIRs, petitioner was granted bail by learned Special Court and petitioner was regularly appearing during trial; therefore, there was no occasion to cancel the bail.

(4) *Per contra*, learned State Counsel, while opposing the prayer, submits that petitioner was granted bail subject to the specific condition that in case he is found to have been involved in any other similar case in future, then the prosecution would be at liberty to move an application for cancellation of bail. Further submits that it is a matter of record that petitioner was found involved in two cases under the NDPS Act and as on today, he is facing total four cases of similar nature; hence, he is a habitual offender and involved in the illicit sale & purchase of the narcotics. Also contended that such incidents are increasing day-by-day in the State of Haryana; thus, learned Special Court, after taking into consideration the material on record and hearing both sides, has rightly cancelled the bail.

(5) Heard learned Counsel for the parties and perused the paper-book.

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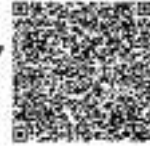


(6) It transpires that petitioner was granted bail by learned Special Court in FIR No.512 dated 27.11.2023 (P-1) and operative part of the order reads as under:-

“..... However, in view of law laid down in Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382 (SC) & Prabhakar Tewari Vs. State of U.P. and another 2020 (1) RCR (Criminal) 831 and in the changed circumstances, but without commenting on the merits of the case, the applicant-accused is admitted to regular bail subject to furnishing bail bonds in the sum of ₹ 1,00,000/- with one surety in the like amount having immovable property to the satisfaction of concerned learned Illaqa Magistrate/Duty Magistrate subject to the following terms and conditions:-

- i That applicant-accused shall not commit any offence similar to the offence of which he is an accused and in case, if the applicant-accused is found indulged in any such case of similar nature, in future, the prosecution will be at liberty to seek the cancellation of bail.*
- ii. That applicant-accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to tamper with the evidence.*
- iii. That applicant-accused shall not leave India without the permission of the Court.”*

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(7) Perusal of the above extract reveals that learned Special Court, while granting bail to the petitioner, made it clear that if he is found involved in any such case of similar nature, prosecution would be at liberty to move an application for cancellation of bail.

(8) Even otherwise, had there been no liberty; still in case petitioner misused the concession, the prosecution is always at liberty to move such an application for cancellation of bail and that can be considered in accordance with law by the same Court or by this Court.

(9) Here it is relevant to recapitulate the provisions of Section 439 of the Code of Criminal Procedure, 1973 (*for short "Cr.P.C."*):-

" Special powers of High Court or Court of Session regarding bail.-

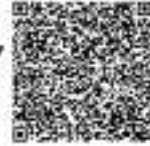
(1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by

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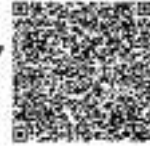
the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

(1A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860).

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

A bare perusal of Section 439 (2) Cr.P.C. clearly envisages that in case there is a misuse of the concession, bail granted to an accused can be cancelled.



(10) Hon'ble the Supreme Court in "**Aslam Babalal Desai Versus State of Maharashtra**", (1992) 4 SCC 272 has laid down certain guidelines for cancellation of bail under Section 437(5) & 439(2) Cr.P.C. in para 11 of the judgment and the relevant portion thereof is recapitulated as under:-

"(i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make him-self scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc."

(11) Concededly, in the present case, petitioner has misused the concession and violated the bail condition *viz "if the applicant-accused is found indulged in any such case of similar nature, in future, the prosecution will be at liberty to seek the cancellation of bail"*, which cannot be said to be illegal in any manner.

(12) In view of the above, this Court is of the considered opinion that after obtaining the concession of bail pending trial, petitioner is found to have been involved in two other cases under the NDPS Act; thereby he violated the order dated 04.01.2024 and as such, misused the concession.

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(13) Although, learned Counsel for the petitioner tried to persuade this Court while relying upon the judgment of a Coordinate Bench in case of **Rajiya’s case** (*supra*); but that is not helpful for the following reasons:-

- 1. *In that case, bail granted to the accused was cancelled automatically without examining any circumstances whatsoever; whereas in the present case, sound reasoning has been assigned by learned Special Court.*
- 2. *It was also observed in **Rajiya’s case** that if the applicant would be found involved in any other case of similar nature, the bail granted would be deemed to be dismissed without further notice; which is not the situation in the present case.*

(14) Consequently, this Court does not find any illegality with the impugned order, passed by learned Special Court. Resultantly, there is no option except to dismiss the petition.

(15) So ordered.

(16) Needless to say that the above observations be not construed as an expression of opinion on the merits of allegations levelled in FIR No.512 dated 27.11.2023 (*supra*) against the petitioner in any manner.

Pending application(s), if any, shall also stand disposed off.

6th March, 2025
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No