

CRM-M-21526-2021
(through video conferencing)

Vijay Kumar @ Vijay

Versus

State of Punjab

Present : Mr. Vinod Kumar, Advocate
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

This is the second petition filed under Section 439 Cr.PC for grant of regular bail to the petitioner in case FIR No.67 dated 28.08.2020 under Sections 454, 380 IPC registered at Police Station Hajipur District Hoshiarpur.

On the last date of hearing, a prayer was made by the learned counsel for the petitioner for withdrawal of the instant petition on the ground that the petitioner had since been released on bail vide order dated 15.06.2021 of Judicial Magistrate, Ist Class, Mukerian.

In this background, a report was called for, from the Court below as to how the petitioner had been extended the concession of bail during the pendency of the instant petition.

Report dated 06.07.2021 from Judicial Magistrate, Ist Class, Mukerian has been received, which is annexed as Annexure 'A' As per the report, the petitioner approached the trial Court for grant of regular bail under Section 437 Cr.PC by misrepresenting and concealing the factum of the instant petition having been filed and still pending consideration before this Court. As per the bail application filed under Section 437 Cr.PC by the accused-petitioner on 08.06.2021 as well as the affidavit of the mother of the accused-petitioner, which have been annexed with the said report, it clearly stands revealed that the pendency of the instant petition was cleverly concealed from the Court below.

It would be pertinent to reproduce not only the affidavit filed

by the mother of the accused but also the contents of the second bail application filed by the petitioner before the Court below on 08.06.2021, which are as under:

Second Bail Application u/s 437 Cr.PC on behalf of accused Vijay Kumar @ Vijay

The applicant/accused prays as under:

1. *That the above noted case is pending before this Hon'ble Court and is fixed for 21.06.2021.*
2. *That the above said false FIR has been registered against the applicant/accused at P.S.Hajipur.*
3. *That nothing is left to be recovered from the applicant/accused as the recovery has already been affected.*
4. *That the applicant/accused has filed first regular bail application before this Hon'ble Court, which was dismissed by this Hon'ble Court vide its order dated 17.11.2020. Thereafter the accused/applicant filed bail application under Section 439 Cr.PC in Session Court, Hoshiarpur and again the said bail application was dismissed by the Hon'ble Court of Mrs.Amarjot Bhatti, Session Judge, Hoshiarpur vide its order dated 09.12.2020. Copy of the order passed by the Hon'ble Court of Mrs. Amarjot Bhatti, Session Judge, Hoshiarpur is attached herewith.*
5. *That this Hon'ble Court has granted the benefit of regular bail to the co-accused namely Vipin Kumar vide order dated 18.05.2021. Copy of the order is attached herewith.*
6. *That no useful purpose will be served by keeping the accused behind the bars.*
7. *That the trial of the above said case will take long time to conclude as no useful purpose will be served.*

8. *That the applicant/accused undertakes to appear in this Hon'ble Court on each and every date fixed by this Hon'ble Court in the above noted case, if the applicant is admitted to bail by this Hon'ble Court.*

It is, therefore, prayed that the second bail application of the applicant/accused may please be accepted and the applicant/accused may please be released on bail till the final disposal of the case in the interest of justice.”

AFFIDAVIT

“I, Pooja Devi, aged about 35 years s/o Jaspal Singh r/o Palakh (&&), Kangra, Bhogarwan, Himachal Pardesh, do hereby solemnly affirm and declare as under:

1. *That I am mother of applicant/accused, who is presently in District Jail, Hoshiarpur.*
2. *That this is second regular bail application under Section 437 Cr.PC and no such any other regular bail application under Section 437 Cr.PC is either pending or decided by any competent court of law.”*

A perusal of the contents of the aforementioned bail application and affidavit makes it abundantly clear that a fraud has been played not only upon the Court below but also this Court inasmuch as the instant petition was filed on 25.05.2021 by way of second petition under Section 439 Cr.PC and on the other hand an application seeking concession of bail under Section 437 Cr.PC was filed subsequently on 08.06.2021 before the Court below by cleverly concealing the pendency of the instant petition. In the circumstances, it is evident that there has been blatant concealment and misrepresentation of facts while moving the application under Section 437 Cr.PC on 08.06.2021. The Court below cannot thus be held responsible for

any judicial over-reach much less impropriety in entertaining the application filed under Section 437 Cr.PC on 08.06.2021 and thereafter extending the concession of bail to the petitioner.

In the aforementioned circumstances, the prayer made by learned counsel for the petitioner seeking withdrawal of the instant petition on the ground that the petitioner has since been released on bail vide order dated 15.06.2021 by the Court below deserves to be declined. This Court deems it appropriate to suo moto take cognizance of the fraud, which has been played upon both this Court as well as the trial Court by the petitioner. Notice is issued to the petitioner as to why the bail granted to him by the Court below vide order dated 15.06.2021 be not cancelled.

Learned counsel for the petitioner accepts notice for 18.08.2021.

It would be pertinent to mention here that time and again, more so in the recent past, it has come to the notice of this Court that during the pendency of a petition under Section 439 Cr.PC before this Court, in some cases, the accused have clandestinely approached the trial Court seeking a similar relief in the matter of bail by either concealing the factum of the pendency of a petition under Section 439 Cr.PC before this Court or by misrepresenting facts. Such malpractices which are being indulged in, are without a doubt, a matter of serious concern which deserve to be nipped in the bud at the earliest.

This Court, therefore, deems it appropriate to issue the following directions to the Courts below in the States of Punjab, Haryana and U.T., Chandigarh:

1. That in each and every case when an application for bail is made before the Courts below, under any of the provisions of the Code of Criminal Procedure, it shall be mandatory to mention in the application as to whether such or similar application for bail under any of the provisions of Code of Criminal Procedure has or has not been made before any Superior Court, and if at all, a Superior Court has been approached for similar relief, the result thereof.
2. An application, which does not contain the aforementioned information shall not be accepted/entertained and would be returned for resubmission with the necessary information.
3. It needs to be also clarified that the Public Prosecutors / prosecuting agency shall be duty bound to apprise the Court concerned (before whom the bail application has been moved), after collecting the necessary information from the investigating officers with respect to the filing of any application/petition before any Court, seeking concession of bail under the provisions of Code of Criminal Procedure and the result thereof.
4. In case of any lapse/default on the part of the investigating agency/prosecution in the said regard, it would be construed to be a fraud played upon the Court, which could invite departmental as well as penal action against the erring parties/officials, as the case may be.

Registrar General of this Court is directed to circulate this order to all concerned for information, and necessary and strict compliance.

22.07.2021
sonia

(MANJARI NEHRU KAUL)
JUDGE

