
(2011) 12 P&H CK 0192

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M 17638 of 2011

Gurdeep Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 58(2), 61
Penal Code, 1860 (IPC) — Section 182

Citation : (2011) 12 P&H CK 0192

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Gurdeep Singh has filed this petition u/s 439(2) of the Code of Criminal Procedure (in short, Cr.P.C.) seeking cancellation of anticipatory bail granted to respondent No. 2 Maan Singh in case FIR No. 73 dated 20.12.2010 under sections 21, 61, 85, 58(2) of the NDPS Act, registered at Police Station Dhilwan, District Kapurthala by learned Judge, Special Court, Kapurthala vide order dated 31.3.2011, Annexure P/8.

2. This case presents a very strange picture. Impugned FIR was registered against the petitioner regarding recovery of 14 grams smack from his car. The petitioner was arrested and remained in custody for ten days. However, on inquiry it was found that the said smack was planted in the car of the petitioner by respondent No. 2 and his accomplices. Accordingly, after investigation challan has been prepared against respondent No. 2 and his accomplices whereas petitioner has been found innocent. Respondent No. 2 has been granted anticipatory bail by learned Sessions Court on the ground that he had joined investigation pursuant to interim order and was therefore not required for custodial interrogation.

3. I have heard learned counsel for the parties and perused the case file.

4. Counsel for the petitioner vehemently contended that the petitioner was falsely implicated in the case at the instance of respondent No. 2 and his companions and had to remain in custody for ten days whereas respondent No. 2 who got the petitioner implicated in a serious case under the NDPS Act has been granted anticipatory bail without any justification. It was also pointed out that one Rekha Rani at the instance of respondent No. 2 also moved application regarding offence of rape against Bakshish Singh who is witness on behalf of the petitioner but on inquiry the said application was also found to be false and calandra u/s 182 IPC has been filed against respondent No. 2 as well as Rekha Rani and otheRs.

5. On the other hand, counsel for respondent No. 2 contended that anticipatory bail granted to respondent No. 2 cannot be cancelled on the ground that the order is vitiated but can be cancelled only on the ground that the benefit of anticipatory bail has been misused. It was also contended that it is to be established during trial as to whether petitioner was falsely implicated or respondent No. 2 has been falsely implicated in the case.

6. I have carefully considered the rival contentions. The matter has to be decided on the basis of evidence collected during investigation. It has come in investigation that smack was planted in the car of the petitioner by respondent No. 2 and his companions. The matter is very serious because the petitioner was got falsely implicated in a serious case under the NDPS Act. Attempt was also made to implicate petitioner's witness Bakshish Singh in a false case of rape.

7. Keeping in view all the circumstances but without meaning to express any opinion on the merits of the case, impugned order Annexure P/8 granting anticipatory bail to respondent No. 2 in such a serious case is wholly unjustified. It may be added here that order granting bail (anticipatory or regular bail) can be challenged on both grounds i.e. on the ground that the order is wrong and also on the ground that the concession of bail has been misused.

8. In view of the aforesaid, the instant petition is allowed. Impugned order Annexure P/8 is set aside. Anticipatory bail granted to respondent No. 2 is cancelled. Respondent No. 2 shall surrender before Investigating Officer or Illaqa Magistrate or Special Court within 15 days from today. Investigating Officer is at liberty to take steps for arrest of respondent No. 2 forthwith. However, nothing in this order shall have any bearing on petition for regular bail that may be filed by respondent No. 2 pursuant to his arrest.