
(1996) 01 P&H CK 0093

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 13619-M of 1995

Rabinder Singh Tomar

APPELLANT

Vs

Inspector, Customs and Central Excise, Chandigarh

RESPONDENT

Date of Decision : 15-01-1996

Acts Referred:

Citation : (1996) 2 AICLR 716 : (1996) 2 RCR(Criminal) 7

Hon'ble Judges : V.K.Jhanji, J

Advocate : S.K. Sharma, K.D. S. Hooda, K.S. Ahluwalia, Rajender Lal Chopra,
Advocates for appearing Parties

Judgement

V.K. Jhanji, J.

1. In this application, prayer made is to set aside the order dated 19.10.1995 (Annexure P.5) of the learned Sessions Judge, Chandigarh, whereby the bail earlier granted to the petitioner has been cancelled.

2. Petitioner, alongwith three others, namely Palvinder Singh Randhawa, Vijay Kohli and Manohar Singh were allegedly found to be possession of 6.5 kg. of heroin. On 21.5.1995, they were remanded to custody by the Duty Magistrate. Petitioner filed an application on 17.8.1995 making a prayer for bail on the ground that challan has not been presented within 90 days and therefore, as contemplated under proviso to Section 167(2), Cr.P.C. he is entitled to be released on bail as he is prepared to furnish the bail bonds alongwith surety, if any. It may be noticed that the 90th day was to fall on 18.8.1995 but the Courts were closed on account of Public holidays on 18th, 19th and 20th of August, 1995 and, therefore, challan was presented on 21.3.1995 i.e. the date the Court opened after three holidays. However, bail was allowed to the petitioner on 23.8.1995 on the ground that the challan had not been presented within the statutory provision of 90 days. Bail was allowed to all four of them. On 13.9.1995, State made an application for cancellation of bail. The learned Sessions Judge, vide order dated 19.10.1995 cancelled the bail. In this petition, prayer is for cancellation of order dated 19.10.1995.

3. Present petition came to be filed on 3.11.1995 and vide order dated 8.11.1995, Swatanter Kumar, J. ordered that the petitioner be not arrested or sent to judicial custody till further orders. The learned Judge had earlier on 31.10.1995 passed similar order in the connected case, Criminal Misc. No. 18206M of 1995.

4. Petitioner appeared before the learned Chief Judicial Magistrate on 14.11.1995, and on 28.11.1995 in committal proceedings. On 5.12.1995, petitioner appeared before the Sessions Judge after the petitioner was committed to Sessions Judge. On 7.12.1995, when the case was fixed, petitioner did not appear and made an application for exemption but that application was rejected and nonbailable warrants were ordered to be issued against him. Petitioner was taken into custody on 15.12.1995. It has also come on the record that the petitioner presently has been detained under the NDPS Act.

5. Learned counsel for the petitioner submitted that no case had been made out for cancellation of bail. According to the counsel, once the bail had been granted, may be under proviso to Section 167(2), Cr.P.C., the State was required to make out a case relevant for cancellation of bail. Further, according to the counsel, no such case had been made out and, therefore, the order cancelling the bail has to be set aside.

6. In answer to these submissions, the learned counsel for the State has contended that the order granting bail by the Sessions Judge was without jurisdiction inasmuch as the challan was presented within time as the 90th day was a public holiday and the challan was presented on the opening of the Court and therefore, petitioners could not have been released by the learned Sessions Judge under the proviso to Section 167(2) Cr.P.C. He also contended that the learned Sessions Judge has rightly cancelled the bail of the petitioner which should not be interfered with by this Court.

7. The submission of learned counsel for the State that challan was presented within time and on that score, bail could not have been granted by the Sessions Judge, has become academic because the order granting bail was never challenged. As regards the order impugned in this petition, it has been held in *Raghubir Singh v. State of Bihar*, AIR 1937 SC 149 that the bail can be cancelled under subsection (5) of Section 437 or subsection (2) of Section 439 on considerations relevant for cancellation of an order thereunder. The grounds for cancellation under Sections 437(5) and 439 (2) are identical, namely, bail granted under Section 437(1) or (2) or 439 (1) can be cancelled where, (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 of 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 himself scarce by going underground or becoming unavailable to the investigating agency; (vii) attempts to place himself beyond the reach of his surety, etc.

8. In the present case, the learned Sessions Judge while cancelling the bail, has taken into consideration the secret information/communication dated 13.10.1995 from the Directorate of Revenue Intelligence, New Delhi which has also been placed before him. In this communication, it has been stated that the intelligence available with Directorate suggests that Palvinder Singh Randhawa is likely to jump bail and leave the country. With respect to Sarvshri R.S. Tomar and Vijay Kohli, it has been pointed out that they have left their known addresses and this is also preparatory to jumping the bail. The Court is competent to cancel the bail if it appears to the Court that there is likelihood of accused fleeing to another country or to attempt to make himself scarce by going underground or becoming unavailable to the Investigating Agency/Court. In the present case, intelligence report as also the fact that one of the accused, namely, Palvinder Singh whose bail had also been cancelled, is not traceable and is alleged to have left the country, do raise reasonable apprehension in the mind of the State that the petitioners are making an attempt to jump the bail. The heroin alleged to have been recovered from the petitioner is of sizeable quantity i.e. 6.5 kg. and therefore, I am of the view that the order of the learned Sessions Judge, Chandigarh, cancelling the bail calls for no interference.

Dismissed.