

CRM-M-52799-2022 and CRM-M-55313-2022

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2023:PHHC:155360-DB

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on : 22.11.2023

Date of decision: 05.12.2023

1. CRM-M-52799-2022
- PARMODHPetitioner
- Versus
- STATE OF PUNJABRespondent
2. CRM-M-55313-2022
- CHETAN SEHDEVPetitioner
- Versus
- STATE OF PUNJABRespondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present : Mr. Jasdeep Singh Kailey, Advocate for
Mr. J.S.Dadwal, Advocate
for the petitioner(s) (in both the cases).

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. Vivek Sharma, Advocate
for the complainant. (in CRM-M-55313-2022).

SURESHWAR THAKUR, J.

1. Since both criminal appeals bearing No. **CRM-M-52799-2022 and CRM-M-55313-2022** arise from a common FIR. Therefore, both the criminal appeals (supra) are amenable for becoming decided through a common verdict.
2. The facts relevant for deciding the relevant instant appeals, are, that FIR bearing No. 66 of 12.04.2022, embodying therein offences constituted under Sections 307/341/323/427/506/148/149/34

IPC, and, under Section 25/27/54/59 of the Arms Act and Section 13 of the UAPA Act, 1967 (added lateron vide DDR No. 23 dated 12.04.2022), became registered with Police Station Tibba, District Ludhiana.

3. Before the petitioner-Parmodh accessing this Court, he had earlier instituted bail application under Section 439 Cr.P.C., before the learned Additional Sessions Judge, Ludhiana, who, had declined bail to the petitioner through its making an order on 02.11.2022, in bail application, bearing No. 22007 of 2022.

4. On the other hand, the bail applicant one Chetan, had also prior hereto, thus instituted bail application No. 22292 of 2022, before the Additional Sessions Judge, Ludhiana, whereons a verdict of dismissal was made on 02.11.2022.

5. This Court through an order made on 04.10.2023, had made the hereinafter extracted direction(s), upon, the learned State counsel.

“ 1. As prayed for by the learned State counsel, detailed affidavit be filed disclosing therein whether in the final report drawn under Section 173 Cr.P.C., an offence embodied under the UAPA has been included in the said report.....”

6. Moreover, through an order made on 20.10.2023, order whereof is extracted hereinafter, this Court had directed the Commissioner of Police, Ludhiana, to record his personal appearance before this Court.

“ 1. As prayed for, by the learned State counsel, a further period of two weeks is granted for complying with the order made by this Court, on 04.10.2023.

2. On the subsequent date of hearing, the

Commissioner of Police, Ludhiana, shall record his personal appearance before this Court.....”

7. The reason for the above orders becoming passed, by this Court, became sparked from the factum, that though in the FIR (supra), an offence under Section 13 of UAPA Act, became initially included, but subsequently, in the charge-sheet drawn and filed, before the learned trial Judge concerned, by the investigating officer concerned, thereins became excluded, the offences embodied under the relevant provisions of UAPA Act.

8. Reply, on affidavit, to the petition has been filed by the Commissioner of Police, Ludhiana. A reading of the reply on affidavit discloses, that in the instant FIR, the offence under Section 13 of the UAPA Act, was added vide DDR No. 23 of 12.04.2022, thus on the ground, that during investigations, it was revealed, that the accused namely Pankaj Rajput and Chetan Sehdev, rather had created a gang, whereby they indulged into fights with the public and, as such, there was panic and fear in the society.

9. Be that as it may, it is also been mentioned in the reply, on affidavit, that during investigation(s) being carried into the petition FIR, the said investigation(s) revealed, that the provisions of Section 13 of the UAPA Act rather were not liable to be embodied in the said FIR.

10. Moreover, in the final report which became instituted under Section 173 Cr.P.C., before the learned trial Judge concerned, thereins too, since the offences under the UAPA, were not revealed to be committed by the present petitioner(s), as such, the said provisions,

as carried in the UAPA, thus were ordered to be deleted vide DDR No. 12 of 23.06.2022.

11. Therefore, in the final report the offences embodied under the UAPA Act, were not included therein. The consequence thereof, is that, the stringency of the provisions of the said Act, whereby the present petitioner(s), may become precluded to claim the facility of regular bail from this Court, do thereby become eased. Resultantly, this Court may become constrained, unless there is evidence on record revealing, that the present bail petitioner(s), were not co-operating with the relevant investigation(s) and/or were tampering with the prosecution evidence, to thus allow theirs being released from judicial custody.

12. The reply on status report, does not disclose qua any protest being made by the investigating officer concerned, about the facility of regular bail, being granted to the present petitioner(s), thus on the ground, that on theirs becoming released from regular bail, there is every likelihood of theirs tampering with the prosecution evidence or there being likelihood of theirs influencing the prosecution witnesses concerned.

13. Therefore, in the wake of conclusion of investigation(s) into the petition-FIR, besides the factum of the prolonged judicial incarceration of the present petitioners, this Court may become constrained to allow the present bail application(s).

14. However, it is also revealed in the reply, on affidavit, furnished to the present bail petition(s), that insofar as, the co bail-

petitioner-Chetan Sehdev is concerned, there are also the hereafter extracted FIRs, thus registered against him.

1) FIR No. 205 dated 03.06.2017 under Section 13/1/67 Gambling Act, Police Station Basti Jodhewal, District Ludhiana, 2) FIR No. 80 dated 24.09.2013 under Section 302, 201, 34 IPC, Police Station Doraha, District Khanna, 3) FIR No. 153 dated 29.11.2013 under Section 382, 341, 148, 149 IPC, Police Station Daresi, District Ludhiana, 4) FIR No. 26 dated 14.02.2022 under Section 323, 341, 427, 506, 148, 149 IPC, Police Station Tibba, District Ludhiana.

15. Moreover, in the said status report, it is also disclosed, that insofar as the bail-petitioner-Parmodh is concerned, the hereafter extracted FIRs become also registered against him.

1) FIR No. 55 dated 12.04.2022 under Section 365, 392, 120-B IPC, Police Station Division No. 8, District Ludhiana.

2) FIR No. 64 of 2019 under Section 379 IPC, Police Station Division No. 8, District Ludhiana.

16. It is on the above ground, that the learned State counsel submits, that since the present bail petitioner(s) are habitual offenders, thereupon there is every likelihood of theirs re-indulging in crime events. However, the repeated indulgences of the present bail applicants in crime, does not yet preclude this Court, from enlarging them on regular bail, as the imposition of the hereafter onerous conditions upon them, rather would ensure that hereafter, they do not disturb public order, through theirs re-indulging in crime.

17. Therefore, in the wake of the imposition of hereafter onerous conditions upon the bail applicants, the factum of theirs

repeatedly indulging in crimes would rather become eased and consequently this Court would become facilitated to enlarge them on regular bail.

18. In consequence, both the bail petition(s) are allowed and the bail-petitioner(s), unless they are not required in some other case and/or if they have yet not been ordered to be released, on bail, through orders becoming made by jurisdictionally competent Courts, in respect of the FIRs (supra), as became registered against them, thereupon, they are ordered to be released from custody in respect of the petition-FIR, but only subject to the imposition of the hereafter extracted conditions.

1) That both bail petitioner(s) shall furnish personal and surety bonds in a sum of Rs. 1 Lakh each, to the satisfaction of the learned Judicial Magistrate concerned.

2) That they shall give an undertaking before the learned Judicial Magistrate concerned, that they shall not influence prosecution witnesses nor shall they tamper with the prosecution evidence.

3) That they shall make an undertaking before the learned trial Magistrate, that in the event of theirs re-indulging in crime event(s), thereupon, the grant of regular bail to them, through orders made by this Court, shall be deemed to be *ipso facto* rescinded, without any further reference being made to this Court.

4) That the passports, if any, held by the present bail petitioner(s) shall become forthwith deposited by them with the SHO of the jurisdictional Police Station concerned.

19. The reason for this Court making the hereinabove direction(s) upon the Commissioner of Police concerned, ensued from

the factum of the mechanical and perfunctory manner, of the investigating officer(s) concerned, proceeding to include UAPA offences in the present FIR, despite ultimately a conclusion being recorded, that they were not required to be included in the petition-FIR. The above mechanical and perfunctory manner of inclusion of offences under the UAPA Act, in the petition FIR, does ultimately cause deep trauma, upon the minds of the bail petitioner(s), as the stringency and the exacting rigor, of the relevant provision of the UAPA Act, do thereby prima facie, forbid them, to claim the facility of bail from the Courts of Law.

20. The non-application of mind by the investigating officer concerned, to yet include offences under the UAPA Act, against the bail petitioner(s) in the present FIR, is thus, required to be curbed.

21. Therefore, in the above regard, certain direction(s) are required to be passed upon the Police Commissioners of the Police District concerned, besides, upon the Superintendents of Police of the Police Districts concerned.

22. In consequence, this Court deems it fit and appropriate to make the hereafter direction(s), upon the above, so as to ensure, that a dire and circumspect application of mind, thus, is made by the investigating officer concerned, in regard to theirs making a contemplation vis-à-vis the inclusion of offences in the UAPA Act, in the FIRs concerned.

23. In consequence, it is ordered hereafter that :

1) The (supra) shall ensure that they shall on a day-to-day basis monitor the investigation(s), which are conducted in respect

of the FIRs concerned, wherein, the investigating officer concerned, after collecting the relevant incriminatory material against the accused concerned, is intending to include therein offences under the UAPA Act.

2) After a close scrutiny, thus on a day-to-day monitoring of the investigation(s) being done by the investigating officers concerned, especially when the investigating officers concerned, deem it fit to include therein offences embodied, under, the UAPA Act, thereupon the (supra), shall after making a closest application of mind to the incriminatory material, as becomes collected by the investigating officer, thus shall ensure whether there is any necessity of inclusion or exclusion of offences embodied under the UAPA Act, thus in the relevant FIR.

4) That in case there is dereliction of duty on the part of the (supra), thereupon the Director General of Police, Punjab, shall ensure, that even with respect to the (supra), appropriate action in accordance with law, is recommended to be made.

24. A copy of this verdict be forthwith transmitted to the Director General of Police, Punjab, so that they are subsequently forwarded for strict compliance thereto being made by the (Supra).

25. A copy of this order be placed on the file of other connected case.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

05.12.2023

kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No