

Parminder Singh Dhillon v. State of Punjab (M. M. Punchhi, J.)

discipline or the administration of the internal affairs of University, the Supreme Court observed as under:—

“We would also like to observe that, in a matter touching either the discipline or the administration of the internal affairs of a University, Courts should be most reluctant to interfere. They should refuse to grant an injunction unless a fairly good *Prima facie* case is made out for interference with the internal affairs of Educational Institutions’.

On that principle also we are reluctant to interfere in this matter as there is no flagrant violation of the rules nor the interpretation put by the University can be said to be absurd or unreasonable.

(7) In this view of the matter, that the writ petition fails and is dismissed with no order as to costs.

(8) During the pendency of this writ petition,—*vide* this Court's order dated 17th September, 1984, the petitioner was also allowed to sit in the remaining papers of the Second Professional examination of the M.B.B.S. which commenced on 12th September, 1984. It has been stated at the Bar and not denied that the petitioner appeared but his result is not being declared by the University because of the pendency of this writ petition. In these circumstances, it is expected that the University will take into consideration the subsequent events and will pass appropriate orders in the case of the petitioner. However, any orders passed will not set any precedent for others.

H. S. B.

Before M. M. Punchhi, J.

PARMINDER SINGH DHILLON,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 2166-M of 1985

April 24, 1985.

Terrorist Affected Areas (Special Courts) Act (LXI of 1984)—Section 15(4)—Code of Criminal Procedure (II of 1974)—Sections 438 and 439—Arms Act (XI of 1878)—Sections 3 and 25—Offence under Arms Act allegedly committed—Such offence made exclusively triable by a Special Court—Accused seeking anticipatory bail—Application for such bail—Whether maintainable—Accused

surrendering in Court—Bail—Whether could be granted under Section 439.

Held, that an offence under Section 25 of the Arms Act, 1878 is triable by a Special Court established under the Terrorist Affected Areas (Special Courts) Act, 1984. Section 15(4) thereof bars the jurisdiction of the Court to grant anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973.

(Para 6)

Held, that where the accused had surrendered to the High Court and his immediate arrest is ordered for the offence allegedly committed by him and he being in custody, the Court in exercise of the powers under Section 439 of the Code can order his bail despite opposition by the State if the Court is satisfied that there are reasonable grounds for believing that the accused so far was not guilty of the offence alleged against him and if released on bail is not likely to commit such an offence.

(Para 7)

Application under Section 438 of the Cr. P. C. praying that during the pendency of this petition, the petitioner be granted ad-interim anticipatory bail.

F.I.R. No. 81 of 1985, P. S. Samrala, under Section 25 of Arms Act.

Rajiv Bhalla, Advocate, for the Petitioner.

H. S. Bedi, Dy. Advocate General, Punjab.

JUDGMENT

M. M. Punchhi, J. (Oral).

(1) This petition for anticipatory bail preferred by Parminder Singh Dhillon of Samrala has arisen in the following manner:

(2) The petitioner, as it appears, is a liquor licensee at Samrala. Suggestedly, his objectionable activities styled as 'opium smuggling etc.' engaged the attention of the local police. Apprehensive that he would be arrested, he approached this Court by way of Criminal Misc. No. 5617 of 1984 in September, 1984 for pre-arrest bail. *Inter alia*, he averted therein that his 32. Webley Scatt revolver bearing license No. 474/8 Samrala had illegally been taken away by Shri Anup Singh Minhas, DSP, on September 21, 1984, during the course of a raid conducted by him on his house in his absence. On notice being issued to the Advocate-General,

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Punjab, the petition was rendered infructuous on account of the Assistant Advocate-General, Punjab, making a candid statement on September 28, 1984, that the petitioner was not required in any case by the officials of the Police Station, Samrala, and that in case he was so required he shall be given two days advance notice.

(3) It appears that in November, 1984, the District Magistrate, Ludhiana, was moved to cancel the arms license of the petitioner, as allegedly he was involved in a number of cases. Show-cause notice was issued to the petitioner by the District Magistrate on March 5, 1985. But simultaneously the license of the petitioner was suspended. The petitioner,—*vide* his reply dated March 12, 1985, *inter alia*, pleaded that no case under the Opium Act was pending against him and the one under section 224, Indian Penal Code, which was pending in a Court was false and baseless. It was further pleaded by him that local DSP Shri Anup Singh Minhas being inimical towards him, had illegally snatched away his revolver since September 21, 1984, and that a complaint filed by him was pending in the Court of Shri M. L. Malhotra, Sub-Divisional Judicial Magistrate, Samrala. He pleaded for the notice of cancellation to be withdrawn.

(4) On April 8, 1985, he sought permission of the District Magistrate, Ludhiana, to deposit his license and again reiterated his allegation that his licensed weapon had been taken away by Shri Anup Singh Minhas on September 21, 1984. On April 8, 1985, the District Magistrate passed an order that when the case against the petitioner gets decided, he should file a copy before him and till then the proceedings to remain pending. These particulars are available from the file of the District Magistrate, Ludhiana, placed before me for perusal by the Deputy Advocate-General.

(5) On the suspension of the arms licence, the police registered a case under section 25 of the Arms Act against the petitioner on April 15, 1985,—*vide* F.I.R. No. 81 of 1985 Police Station, Samrala. It is maintained by the State that on the suspension of the license of the petitioner pertaining to his .32 revolver, the possession of the revolver with him henceforth would attract the provisions of section 3 of the Arms Act. For the reason the police made an effort to arrest the petitioner, but he approached this Court by means of the present petition and obtained stay of his arrest as an interim measure. In the petition, however, the petitioner did not, and perhaps could not, state as to what offence he had committed

for which the police wanted him. However, when notice went to the Advocate-General, Punjab, and he caused appearance, a statement was made by the Deputy Advocate-General, Punjab, before this Court on April 22, 1985, apprising the exact position. The petitioner's counsel then made a statement thereafter that since the revolver had been taken away by Anup Singh Minhas, DSP on September 21, 1984, as maintained by the petitioner throughout, the petitioner was not in possession of any revolver and hence was not guilty of commission of any offence. He was required to file an affidavit in that regard and that affidavit has been placed on file. Additionally, the petitioner's counsel maintained that when the District Magistrate was apprised of the revolver having been taken away in proceedings for cancellation of the license, he had undertaken to look into the matter. However, from the file it appears that there is no such specific undertaking, but in the proceedings for cancellation of license this aspect is inherent in it and the District Magistrate cannot overlook this fact, more so when a criminal complaint in that regard is pending in the Court of Shri M. L. Malhotra, Sub-Divisional Judicial Magistrate, Samrala. Seemingly, the District Magistrate has not specifically undertaken to look into this aspect of the matter because the matter is *sub judice*, and he rightly has been discreet in that regard. But to say that he has nothing to do with the matter would be begging the question.

(6) Offence under section 25 of the Arms Act is triable by a Special Court established under the Terrorist Affected Areas (Special Courts) Act, 1984. Section 15(4) thereof bars the jurisdiction of Courts to grant anticipatory bail under section 438. Code of Criminal Procedure. As suggested by the learned Deputy Advocate-General, Punjab, this Court is impeded from granting any relief to the petitioner and it is pleaded that this petition be dismissed for want of jurisdiction. At the same time, it is undisputed that the District Magistrate has not so far granted any sanction to prosecute the petitioner, which sanction would mandatorily be required, as is clear from the provisions of section 39 of the Arms Act.

(7) This obviously is a coiled situation. In the absence of the sanction from the District Magistrate, no prosecution can be launched against the petitioner. The District Magistrate has kept the matter pending before him for he perhaps wishes to wait for the outcome of the criminal litigation. Does it mean

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that the petitioner must be arrested in all events, suffer some imprisonment and then to plead before the Special Court for bail, this Court wringing its hands in not coming to his rescue? I should think in the negative. Therefore, to pave the way, the petitioner has surrendered to this Court and I order his immediate arrest for the offence allegedly committed by him. And being in custody present before me, in exercise of my powers under section 439, Code of Criminal Procedure, I order his bail despite opposition by the State, for I am satisfied that there are reasonable grounds for believing that the petitioner so far is not guilty of such offence and if released on bail is not likely to commit such an offence while on bail. I am further satisfied that the afore-circumstances are by themselves sufficient and exceptional within the meaning of section 439-A, Code of Criminal Procedure, to grant the petitioner bail. Let him execute bail bonds to the satisfaction of the Additional Registrar for appearance before the Special Court, in case prosecution is launched against him. This petition is allowed in these terms.

N. K. S.

Before D. S. Tewatia and Pritpal Singh, JJ.)

BALDEV SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 2092 of 1985.

April 24, 1985.

Punjab Police Rules, 1934—Rules 16.2 and 16.24(1)—Police official dismissed from service—Appeal and revision to the higher authorities also rejected—Impugned orders not specifically stating that length of service and claim to pension taken into account before passing of the order of the Punishing Authority—Impugned order—Whether liable to be set aside—Show-cause notice served on official but said official not orally examined—Such non-examination—Whether requirement of Rule 16.24(1)(ix)—Non-compliance with the Rule—Whether vitiates the dismissal.

Held, that Rule 16.2(i) of the Punjab Police Rules, 1934 is in the nature of guidance to the punishing authority, i.e., punishing authority has to be alive to the aspect that while making an order of dismissal