

MOHAN SINGH

v.

UNION TERRITORY, CHANDIGARH

February 20, 1978

[V. R. KRISHNA IYER, JASWANT SINGH AND R. S. PATHAK, JJ.]

*Criminal Procedure Code, (Act II of 1974), 1973 Sections 437, 439—
Special powers of High Court under S. 439(2) in cancelling bail.*

The bail granted by the Sessions to the appellant, who was charged for an offence under section 5(2) of the Prevention of Corruption Act, was cancelled by the High Court on the ground that he moved both the Sessions and the High Court simultaneously, without disclosing it to the Sessions Court.

Allowing the appeal by special leave, the Court

HELD : Refusal of bail is not an indirect process of punishing an accused person before he is convicted. This is a confusion regarding the rationale of bail. The real basis of bail law is as laid down by the Supreme Court in [1978] 2 SCR 358 [127 G-H, 128A]

Gurcharan Singh & Ors. etc. v. State (Delhi Administration), [1978] 2 S.C.R. 358 reiterated.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 118 of 1978.

(Appeal by Special Leave from the Judgment and Order dated 11th January, 1978 of the Punjab & Haryana High Court in Criminal Misc. No. 129-M of 1978).

S. K. Mehta for the Appellant.

M. M. Punchhi and P. C. Bhartari for the Respondent.

ORDER

The offence alleged in this case against the appellant is one under Section 5(2) of the Prevention of Corruption Act. Bail was granted by the Sessions Judge after hearing counsel on both sides but it was cancelled by the High Court mainly for the reason that the appellant had simultaneously moved for bail in the Sessions as well as in the High Court without disclosing to the Sessions Court that he had moved for bail in the High Court. This naturally made the High Court feel that the party was not straight-forward in his dealings with the Court. The consequence was that the bail already granted was reversed.

Counsel for the State pressed before us that the corruption of which the appellant was guilty *prima-facie* (according to the results of the investigation) was substantial. Let us assume so. Even then refusal of bail is not an indirect process of punishing an accused person before he is convicted. This is a confusion regarding the rationale of bail. This

- A** Court has explained the real basis of bail law in *Gurcharan Singh & ors. etc. v. State (Delhi Administration)* (1). We do not think there is as yet any allegation against the appellant of interference with the course of justice or other well-established grounds for refusal of bail. In this view, we direct that the appellant be allowed to continue on bail until further orders to the contrary passed by the Sessions Court if good grounds are made out to its satisfaction.
- B**

S.R.

Appeal allowed.

(1) (1978) 2 S.C.R. 358.