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HARJEET SINGH @ SEETA
v.
STATE OF PUNJAB AND ANR.

DECEMBER 6, 2001

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[M.B. SHAH AND B.N. AGRAWAL, JJ.]

Judicial discipline :

C

Application for grant of bail—Allowed by Single Judge of High Court—Cancelled by another Single Judge—Held, not justified—A Judge of the High Court cannot sit in appeal against order passed by co-ordinate Bench of the same court—Code of Criminal Procedure, 1973—Section 439.

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Appellant was charge-sheeted under Sections 302/34 and 307/34 of the Penal Code. He filed an application for bail and it was rejected by the Trial Court. However, Single Judge of the High Court allowed the application. Informant filed an application for cancellation of bail before some other Judge of the High Court alleging that the bail was granted on misconception of facts. The application was allowed. Hence the present appeal.

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Allowing the appeal, the Court

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HELD : For cancellation of the bail on the ground of misrepresentation or mis-statement, the matter ought to have been placed before the same Judge. The Order of cancellation of bail passed by the other Judge of High Court is totally illegal, unjustified and erroneous and was not consistent with judicial discipline. It was not open to the other judge of the High Court to sit in appeal against the order passed by co-ordinate Bench of the same court. If the accused had obtained bail order by misrepresentation or by suppression of facts, it was for the State Government or the aggrieved party to approach the appropriate higher forum. [496-C-D]

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Shahzad Hasan Khan v. Ishtiaq Hasan Khan and Anr., [1987] 2 SCC 684 and *Vikramjit Singh v. State of Madhya Pradesh*, [1992] Supp. 3 SCC 62, relied on.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1253 of 2001.

From the Judgment and Order dated 10.8.2001 of the Punjab and Haryana High Court in CrI. M. No. 10947-M of 2001. A

R.K. Jain and P.N. Puri for the Appellant.

A.V. Palli, Mrs. Rekha Palli, R.C. Kohli and R.S. Suri for the Respondents. B

The Judgment of the Court was delivered by

SHAH, J. Leave granted.

This appeal has been filed against the judgment and order dated 10.8.2001 passed by the High Court of Punjab and Haryana in CrI. Misc. No.10947-M of 2001, whereby the bail granted to the appellant by the High Court vide its order dated 2.2.2001 in CrI. Misc. No.1772-M of 2001 has been cancelled. C

The appellant who was charge-sheeted for the offence punishable under sections 302/34 and 307/34 IPC moved an application for releasing him on bail. That application was rejected by the Additional Sessions Judge on 26.8.2000. Appellant preferred Criminal Misc. No.1772-M of 2001 for releasing him on bail before the learned Single Judge of the High Court. That application was allowed by Mr. S.S. Nijjar, J. on 2.2.2001 by observing that appellant caused injury to the deceased on the back of the head and the post mortem examination shows that there was only one injury on the head. The Court, therefore, observed that case for bail was made out. D E

Thereafter, informant filed Criminal Misc. No.10947-M of 2001 for cancellation of bail by pointing out that as per the post mortem examination there were three injuries on the head of the deceased. It was also pointed out that similarly situated other accused Jaspal Singh was not granted bail. The bail was granted on misconception of facts and hence the misconception order granting bail to the appellant may be set aside. F

The aforesaid CrI. Misc. Petition was placed before Mr. M.L. Singhal, J., who allowed the same by observing as under:- G

“The bail appears to have been allowed to Harjeet Singh @ Seeta only on the feeling that there was only one injury on the head, whereas infact there were three injuries on the head and those injuries have been attributed to Harjeet Singh, Gurbax Singh and Jaspal Singh. The H

A doctor, who performed the post-mortem examination on the dead body was of the opinion that the cause of death was due to head injuries leading to pulmonary embolism which are sufficient to cause death in the ordinary course of nature. It was, thus, not a case where bail could have been allowed to Harjeet Singh @ Seeta. So, this criminal miscellaneous petition is allowed. Bail allowed to Harjeet Singh @ Seeta is cancelled and he is ordered to be taken into custody.”

That order is challenged by filing this appeal.

C Learned senior counsel Mr. Jain appearing for the appellant submitted that the impugned order passed by the learned Judge is totally illegal, unjustified and erroneous and was not consistent with judicial discipline.

D In our view, the submission made by the learned counsel for the appellant is justified one. It was not open to the other Judge of the High Court to sit in appeal against the order passed by co-ordinate bench of the same Court. If the accused had obtained bail order by misrepresentation or by suppression of facts, it was for the State Government or the aggrieved party to approach the appropriate higher forum. In any case, for cancellation of the bail on the ground of mis-representation or mis-statement, the matter ought to have been placed before the same Judge.

E The law on this aspect is well settled. In *Shahzad Hasan Khan v. Ishtiaq Hasan Khan and Anr.*, [1987] 2 SCC 684, while dealing with the subsequent bail application, this Court observed, “normally this Court does not interfere with bail matters and the orders of the High Court are generally accepted to be final relating to grant or rejection of bail.” Thereafter, the Court stated that longstanding convention and judicial discipline require that subsequent bail application ought to have been placed before the same Judge who had passed earlier orders. Placing of such matter before the same Judge has its roots in principle as it prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunning or selecting a court depending on whether the Court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up; if successive bail applications on the same subject are permitted to be disposed of by different Judges, there would be conflicting orders. The Court finally observed that judicial discipline requires that such matters should be placed before the same Judge, if he is available for orders. Same principle is required to be followed even for setting aside the order passed by the Court granting bail on the ground

of mis-representation or mis-statement or suppression of some facts.

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Further, in *Vikramjit Singh v. State of Madhya Pradesh*, [1992] Supp 3 SCC 62, dealing with similar situation, this Court observed as under:-

“..No bench can comment on the functioning of a co-ordinate bench of the same court, much less sit in the judgment as an appellate court over its decision. That which could not be done directly could also not be done indirectly. Otherwise, a party aggrieved by an order passed by one bench of the High Court would be tempted to attempt to get the matter reopened before another bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary...”

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In this view of the matter, this appeal is allowed, the impugned order is set aside. It would be open to the State Government or the aggrieved party to approach the Court for cancellation of bail on the ground of any objectionable conduct on the part of the accused and/or by pointing out that the order granting bail was obtained by suppression of material fact and in such case matter may be placed before the same Judge, who granted bail, if available.

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N.J.

Appeal allowed.