

**(1984) 11 P&H CK 0007**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Appeal Contempt No. 16 of 1979 in C.O.C.P. No. 83 of 1978

Dev Paul Advocate

APPELLANT

Vs

Madan Gopal, A.S.I.and anr.

RESPONDENT

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**Date of Decision:** Nov. 14, 1984

**Hon'ble Judges:** P.C.Jain, J and I.S.Tiwana, J

**Advocate:** S.S. Chopra, R.S. Palta, V.K. Bali, Advocates for appearing Parties

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**Judgement**

I.S. Tiwana, J.

The appellant Advocate impugns the order of the learned Single Judge whereby the respondent police officers have been absolved of the contempt charge brought against them with the allegation that they had wilfully disobeyed the order of the Additional Sessions Judge, Faridkot, dated May 9, 1978 (Annexure P.1), granting him prearrest bail under section 438, Criminal Procedure Code. The appellant was admittedly arrested on May 10, 1978, at about 9.30 A.M. by the respondents in case under section 419/420/468/423/511 of the Indian Penal Code, registered against him at the instance of Shri Kulwant Raj Gupta, Deputy Mannager of the Moga Central Cooperative Bank Limited. The version of the appellant that the time of his arrest he had made the respondent officers aware of the order of the Additional Sessions Judge by producing his own affidavit before them has been disbelieved by the learned Single Judge. His further allegation that in spite of the production of a certified copy of the said order at 6.30 P.M. on the same day before the said officers he still was not released from custody till 11 P.M. has against not been accepted by the learned Single Judge. The order of the Additional sessions Judge, Faridkot (Annexure P 1) granting anticipatory bail to the appellant, reads as follows :

"Present : Shri Balwant Singh Doad, counsel for the petitioner.

Register petition.

Notice to the State for 16.5.1978. Adinterim bail in the sum of Rs. 1000/ is allowed to the applicant in the event of his apprehended arrest by the police.

Dated : 9.5.1978.,

Sd/ Amarjit Chopra,

Addl. Sessions Judge.

Faridkot."

It is conceded on all hands that at the time of appellant's arrest he was not possessed of a certified copy of this order nor was the same produced before the respondent Police Officers. His case only is that he had produced his own affidavit before the said officers wherein it has been mentioned that he had been granted anticipatory bail the Additional Sessions Judge on May 9, 1978, i.e., one day earlier to the date of his arrest. The respondent police officers categorically denied the production of any affidavit by the appellant at the time of his arrest.

2. Having heard the learned counsel for the parties at some length in the light of the evidence on record, we find it difficult to dislodge the following wellmerited conclusion recorded by the learned Single Judge :

"Though I have found that the evidence of the petitioner is not worth reliance, yet even if it may be held that the evidence on both sides is evenly balanced, no finding of guilt can be recorded against the respondents because a charge of wilful disobedience of the order of the learned Additional Sessions Judge has to be proved beyond all reasonable doubt held by the Supreme Court in *Bunna Parsad and Ors. v. The State of U.P.* and Anr. 1968 CAR (SC) 217."

The learned counsel for the appellant is not in a position to refer to any material fact or circumstance, in the light of which we can possibly disagree with the findings recorded by the learned Single Judge.

3. Besides being conscious of the principle that in these proceedings the matter is primarily between the Court and the condemner and a private party cannot be allowed to wreak his vengeance against the alleged condemner. We are also of the view that the mere production of an affidavit by the appellant before the respondent police officers at the time of his arrest did not oblige them to desist from the performance of their legal duty. The mere conveying of the information may be in the form of an affidavit or verbally by the appellant that an order of anticipatory bail had been passed in his favour, did neither establish the genuineness of that information nor amounted to the disclosure of the contents of the said order or, in other words, proved the fulfilment of the terms and conditions of that bail order. If the mere conveying of the information about the passing of an anticipatory bail order by a competent Court is to be taken as good enough a reason for not arresting or apprehending a person alleged to be guilty of a cognizable crime, then to our mind it would be impossible for the police or the officials concerned to apprehend or arrest any person alleged to be guilty of such an offence or a fugitive from law as the moment is or he sought to be arrested he may well

convey a frivolous or faked information to the arresting officer that he had been granted anticipatory bail and thus make it obligatory for such an officer to verify the factum of grant of bail or to seek copy of that order and allow the person sought to be arrested to abscond.

4. Thus for all the reasons recorded by the learned Single Judge in the order under appeal and the ones recorded above, we find no merit in this appeal and dismiss the same but with no order as to costs.