

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-20722-2019 (O&M)

Date of decision : 07.05.2019

Harman Singh alias Bagga

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.S. Sekhon, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Prayer in the petition is to grant anticipatory bail to the petitioner in FIR No.874 dated 28.09.2016 registered under Sections 420/467/468/471 of the Indian Penal Code and Section 61(1) of the Excise Act, 1914, at Police Station Jhajjar, District Jhajjar.

This is apparent from the facts as pleaded that the petitioner was granted concession of bail after having been arrested, by the High Court. However, thereafter, petitioner did not appear before the Court on 21.08.2018 and the Court cancelled the bail and personal bonds and surety bonds were forfeited in favour of the State.

Learned counsel appearing on behalf of the petitioner has submitted that the trial Court had no jurisdiction to cancel the bail as it was granted by this Court in CRM-M-1169-2017. He while referring to Sub-Section 5 of Section 437 of the Code of Criminal Procedure, 1973

(hereinafter to be referred as “the Cr.P.C.”) has submitted that only the Court which has released a person on bail has the jurisdiction to direct that such person be arrested. He further while referring to Sub-Section 2 of Section 439 of the Cr.P.C. has submitted that only the High Court or the Court of Sessions can direct any person who has been released on bail be arrested and commit him to custody.

Section 437 of the Cr.P.C. deals with the powers of the Court other than the High Court and Court of Sessions. Further, the High Court while exercising powers under Section 439 of the Cr.P.C., in cases triable by the Courts below, only directs the concerned Court to admit such accused to bail during the pendency of the trial. High Court does not itself admit the accused to bail. Hence, argument of learned counsel based upon Section 437 (5) of the Cr.P.C. does not have substance. Still further, Section 439 of the Cr.P.C. deals with the powers of High Court or Court of Sessions to grant bail. Section 439(1)(a) of the Cr.P.C. makes a reference to Sub-Section 3 of Section 437 whereas clause (b) of Sub-Section 1 of Section 439 of the Cr.P.C. provide for setting aside or modifying any condition imposed by the Magistrate. Sub-Section 2 of Section 439 of the Cr.P.C. is to be read in that context. Sub-Section 2 of Section 439 of the Cr.P.C. cannot be read in isolation as sought to be read by learned counsel. Still further, Form No.45 of Schedule II of the Cr.P.C., provide the form to be submitted by a person who is admitted to bail, which is extracted as under:-

“FORM NO.45

***BOND AND BAIL-BOND FOR ATTENDANCE BEFORE
OFFICER IN CHARGE OF POLICE STATION OR
COURT***

[See sections 436, 436A, 437, 437A, 438(3) and 441]

I, (name),.....of.....(place), having been arrested or detained without warrant by the Officer-in-charge of.....police station (or having been brought before the Court of), charged with the offence of, and required to give security for my attendance before such Officer or Court on condition that I shall attend such Officer or Court on every day on which any investigation or trial is held with regard to such charge, and in case of my making default herein, I bind myself to forfeit to Government the sum of rupees.

Dated, thisday of, 20....

(Signature)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the above said (name) that he shall attend the Officer-in-charge of police station or the Court of on every day on which any investigation into the charge is made or any trial on such charge is held, that he shall be, and appear, before such officer or Court for the purpose of such investigation or to answer the charge against him (as the case may be), and, in case of his making default herein, I hereby bind myself (or we, hereby bind ourselves) to forfeit to Government the sum of rupees.

Dated, this day of, 20....

(Signature)”

It is apparent that while furnishing bond and bail bonds, accused undertake to attend the Court on every day on which any investigation or trial is held with regard to such charge. Once such bail bond has been furnished, accused is bound to follow the same. Hence, the accused who has defaulted, the Court is to take the steps to secure the presence of the

accused. Hence, there is no substance in the argument of learned counsel for the petitioner. Still further, once accused has submitted to the jurisdiction of the trial Court and has been granted concession of bail, application under Section 438 of the Cr.P.C. is not maintainable as held by the coordinate Bench of this Court in CRM-M-15464-2019. Respectfully following the aforesaid view, the present petition is not maintainable.

Hence, dismissed. However, this would not debar the petitioner to surrender before the learned trial Court and pray for time to bail. If such application is filed, the same shall be decided by the Court within a period of two days.

07.05.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No