

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

**CRM-M No. 54191 of 2018  
Date of Decision:-03.05.2019**

Sham Sunder Joshi

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ**

Present:- Mr. P.K.S. Phoolka, Advocate  
for the petitioner.

Mr. Harsimar Singh Sitta, AAG, Punjab.

**MANOJ BAJAJ J.(Oral)**

This petition has been filed by the petitioner under Section 438 Code of Criminal Procedure for grant of anticipatory bail in complaint No.COMA/917 of 2014, titled as 'State of Punjab through Food Safety Officer vs. Sham Sundar @ Sham Sundar Joshi' dated 14.5.2014, under Section 42(5) of Food Safety Act, 2006 regarding prosecution of offence/contravention under Section 26(1), 26(2)(i) being liable under Section 27(1) read with Section 3(1)(zz) of the Food Safety & Standards Act, 2006, punishable under Section 59 of the FSS Act, 2006, pending in the Court of the Additional Chief Judicial Magistrate, Bathinda. The petitioner apprehend his arrest at the hands of Police.

Learned counsel for the petitioner has invited the attention of the Court to the order dated 07.12.2018 whereby while issuing notice of motion to the respondent-State, the interim protection was extended to the

petitioner. The said order reads as under:-

*“Earlier the petitioner was summoned to face trial for offence under Sections 42(5) of Food Safety Act, 2006, Sections 26(1), 26 (2)(i), 27 (1) read with Section 3(1)(zz) of Food Safety & Standards Act, 2006 and Section 59 of FSS Act, 2006. He appeared before the learned trial Court and was granted bail vide order dated 26.7.2016 and the case was fixed for precharge evidence of the complainant for 23.8.2016 but on 18.10.2016, trial Court observed its mistake and discharged the accused on the ground that in fact the case was still fixed for preliminary evidence and the petitioner has not yet been summoned as accused. It reads as under : -*

*“Perusal of file shows that inadvertently in the present case notice to accused has been passed as yet. The case was actual fixed for preliminary evidence of the complainant. So, previous order regarding issuance of notice to accused stands rectified. So, accused is discharged for the time being as he is not summoned in the present case as yet. CW2 Amandeep is present and examined. For remaining preliminary evidence of the complainant. To come up on 22.11.2016.”*

*Thereafter, summons were affixed on the outer door of the house of the accused. Accordingly, he was ordered to be summoned throughailable warrants of arrest and thereafter, through non-ailable warrants of arrest. Non-ailable warrants of arrest were served upon his son and not upon the petitioner but he did not appear and proceedings under Section 82 Cr.P.C. were initiated vide order dated 18.9.2018. Serving constable*

*affixed proclamation notice less than 30 days.*

*It has been submitted that there is a clear cut violation of the procedure laid down under Section 82 Cr.P.C. for declaring a person proclaimed offender.*

*Notice of motion for 11.3.2019.*

*The petitioner is directed to surrender before the learned trial Court within seven days and on his doing so, he be released on interim bail subject to the satisfaction of the learned trial Court.”*

Learned counsel for the petitioner further contends that in deference to the said order, the petitioner submitted himself before the learned trial Court on 10.12.2018 and has furnished requisite bonds to the satisfaction of the trial Court.

Learned State counsel who is assisted by ASI Maghar Singh does not dispute this fact that the petitioner submitted himself before the learned trial Court on 10.12.2018 and has furnished requisite bonds. Learned counsel on instructions from ASI Maghar Singh further states that the petitioner is not required for custodial interrogation for the time being.

Considering above, the petition is allowed and the petitioner is allowed to remain on bail on the same bail bonds and surety, furnished by him before the trial Court on 10.12.2018.

The petition stands allowed.

May 03, 2019  
Vijay Asija

( MANOJ BAJAJ )  
JUDGE

Whether speaking/reasoned  
Whether Reportable

Yes / No  
Yes / No