

CRM-M-11575-2020 (O&M)

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

**CRM-M-11575-2020 (O&M).
Decided on: December 07, 2020.**

Jaswant Singh

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Kulbhushan Raheja, Advocate,
for the petitioner.**

Mr.Mehardeep Singh Dulat, Addl. A.G. Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in FIR No.24 dated 14.3.2019, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Khanauri, District Sangrur.

An FIR was lodged against the petitioner and intoxicating substance was recovered from the motorcycle which he was riding and thereafter, he was arrested by the police.

The petitioner filed an application for bail before the learned Judge Special Court and he was admitted to interim bail till presentation/receipt of challan/report subject to furnishing of bail bonds of the sum of Rs.1,00,000/- with one surety in the like amount and various other conditions were also imposed.

Interim bail was granted on the ground that the report of the chemical examiner was not received and therefore, following the Division Bench Judgment of this Court in **Inderjit Singh alias Laddi Versus State of Punjab (P&H) DB, RCR (Crl.), 953**, interim bail was granted.

Learned Judge Special Court vide order dated 12.4.2019, while granting interim bail also made it clear that the said interim bail is only till presentation/receipt of challan/report whereupon the applicant-accused was to surrender before the Court and file application for regular bail which was to be disposed of on merits.

Paras 7 and 8 of the order passed by the learned Judge, Special Court, Sangrur, is reproduced as under:-

“7. Applying the aforesaid parameters of law to the facts of the present case, the Court is of the opinion that it is a fit case for grant of relief of interim bail till presentation/ receipt of challan/report of Chemical Examiner by the police. Thus, subject to the contents and their quantity that may be found in the report of Chemical Examiner, the applicant/accused is admitted to interim bail till presentation/receipt of challan/report

subject to his furnishing bail bonds in the sum of Rs.1,00,000/- with one surety in the like amount and the following conditions :-

- i. That the applicant will make himself available in the investigation of the case, as and when required;*
- ii. That the applicant will not tamper with the prosecution evidence; and*
- iii. That the applicant will not leave the country without prior permission of the court.*

8. The learned Additional PP for the State/ Investigating Officer is directed to ensure that the report of Chemical Examiner be produced in the Court immediately on its receipt. Further, it is made clear that this relief of interim bail will subsist only till the receipt of chemical report, whereupon the applicant/accused shall surrender before the court and file Jaswant Singh @ Jassa Vs. State. 4 regular bail application, which shall be disposed of on merits in the light of report of FSL. Both the applications stand disposed of accordingly, without expressing any opinion on the merits of the case.”

Thereafter, the report of chemical examiner was prepared on 16.5.2019 and vide Annexure P2 challan was presented before the Court on 19.10.2019 in the absence of the petitioner and the matter was adjourned to 23.10.2019. Thereafter, the matter was adjourned for 26.11.2019 and the petitioner did not turn up before the trial Court on that date and notice was

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issued to him. On 18.12.2019, petitioner was present in the Court and the matter was adjourned to 3.2.2020 on which date his presence was exempted. Thereafter, when the matter came up for hearing on 27.2.2020, the petitioner absented himself without intimation of reasonable cause and therefore, non-bailable warrants of petitioner were issued. Thereafter, the petitioner did not present himself before the trial Court at all.

The learned counsel for the petitioner has submitted that he has filed the present petition for the grant of anticipatory bail on 13.3.2020 and has submitted that the petitioner did not receive the FSL report and therefore, he could not be faulted and that he received copy of the FSL report only on 19.11.2020. The learned counsel has further submitted that the petitioner although did not approach the learned trial Court for the grant of regular bail, he may be protected by this Court so that he may join the proceedings. He has further submitted that the petitioner is not involved in any other case and that he is ready and willing to join the proceedings before the learned trial Court on the directions of this Court and has prayed for the grant of anticipatory bail.

On the other hand, learned State counsel has submitted that it is a case where there was recovery of 1000 tablets of Buprenorphine from the petitioner and the salt has been established by the FSL report and the same falls in the commercial quantity and the petitioner is not entitled to bail especially in view of the bar contained in Section 37 of the NDPS Act. He further submitted that earlier the petitioner was granted interim bail by the trial Court only on the ground that salt in the confiscated tablets was yet

to be ascertained and therefore, relying upon the Division Bench Judgment of this Court **Inderjit Singh alias Laddi (supra)**, interim bail was granted but without conferring any right upon the petitioner to continue with the interim bail even when the report of FSL was received and the challan was presented and the petitioner himself was present in the Court on one of the dates i.e. 18.12.2019 and he himself sought exemption from personal appearance on 3.2.2020. The learned State counsel has further submitted that a bare perusal of the learned trial Court order granting interim bail itself would show that the said interim bail was conditional in nature. A perusal of para 7 of the order of the trial Court shows that the petitioner was admitted on interim bail till presentation/receipt of challan/report and it was again made clear in para 8 of the order that this interim bail will subsist only till the receipt of report of chemical examiner. He submits that once challan stood presented and it was within the knowledge of the petitioner who had appeared before the trial Court, he was well aware of the fact that interim bail has been vacated in view of the conditional order of interim bail which was passed by the learned Special Judge, on 12.4.2019 and it was the duty of the petitioner to have surrendered before the learned trial Court and apply for regular bail on merits.

Learned State counsel has further submitted that the petitioner has now filed the present petition for anticipatory bail before this Court without exhausting the remedy before the learned Judge Special Court and has directly come to this Court for seeking the remedy of anticipatory bail and therefore, has prayed for the dismissal of the present

petition.

I have heard the learned counsel for the parties.

From the facts which have come to the notice of this Court, it is clear that the petitioner was granted conditional interim bail which expired on the presentation of challan/receipt of FSL report. Admittedly, the challan was presented on 19.10.2019 and even the petitioner presented himself before the trial Court on 18.12.2019 and he was therefore, well aware of the presentation of the challan and the proceedings before the learned trial Court. The nature of interim bail order which was passed by the learned trial Court on 12.4.2019, was very clear. The interim bail was granted only till presentation of challan/receipt of FSL report and once the petitioner himself was aware that the challan has been presented then it was his duty to immediately surrender before the learned trial Court and he could have filed the application for grant of regular bail which could have been decided on merits of the case after the receipt of the FSL report. Therefore, it is a case where the petitioner has himself defaulted and his interim bail was deemed to have been vacated on the date when the challan was presented. Apart from the same, the alleged contraband is 1000 tablets of Buprenorphine which is a huge and commercial quantity under the NDPS Act and therefore, bar under Section 37 of the NDPS Act, is attracted.

Therefore, in the facts and circumstances of the present case, I do not deem it fit and proper to interfere in the present case and consequently, the present petition is hereby dismissed.

However, it is made clear that aforesaid observations of

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this Court are only for the purpose of deciding the present petition and will not in any manner whatsoever reflect on the merits of the case.

December 07, 2020.	(JASGURPREET SINGH PURI)
raj arora	JUDGE
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No