

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

108

CRM-M-42289-2020 (O&M)

Date of decision : 16.12.2020

Naresh Kumar @ Naresh Goyal

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Deepak Aggarwal, Advocate
for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

The case has been taken up for hearing through video conferencing.

CRM-30719-2020

For the reasons mentioned in the application, the same is allowed and the petitioner is exempted from filing certified copy of FIR and copy of report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.').

CRM-M-42289-2020

The petitioner has filed present petition under Section 438 of the Cr.P.C. for grant of anticipatory bail in case FIR No.473 dated 12.12.2020 registered under Sections 406, 420 and 120-B of the Indian Penal Code, 1860 in Police Station Sector-5, Panchkula.

The above-said FIR was registered against the petitioner and Surender Kumar Singla. The petitioner was granted anticipatory bail vide order dated 17.12.2012. On completion of investigation challan (report under Section 173 of the Cr.P.C.) was filed on 19.08.2013. The petitioner absented on 02.12.2013 but he was granted

bail vide order dated 31.01.2014. The petitioner again absented on 14.10.2016 and was declared proclaimed person vide order dated 25.07.2017. The petitioner was arrested in some other case. The petitioner applied for his surrender and production in the present case vide application dated 13.03.2020 and also filed application dated 14.05.2020 for grant of regular bail which was dismissed vide order dated 15.05.2020 and filed another application dated 16.05.2020 for regular bail which was dismissed as withdrawn vide order dated 25.05.2020. On grant of bail in the other case, the petitioner was released on bail by the jail authorities. The petitioner filed application for grant of anticipatory bail before learned Additional Sessions Judge, Panchkula which was dismissed vide order dated 17.11.2020 whereupon the petitioner has filed present petition for grant of anticipatory bail.

Notice of motion.

Pursuant to supply of advance copy of the petition, Mr. Ranvir Singh Arya, Addl. A.G., Haryana has appeared and accepted notice on behalf of the respondent-State.

I have heard arguments addressed by learned Counsel for the petitioner and learned State Counsel and have gone through the relevant record.

Learned Counsel for the petitioner has submitted that the petitioner had applied for surrender in the present case and had also filed application for grant of regular bail and his presence was also marked in the present case through video conferencing but due to omission/negligence on the part of jail authorities/Court, the petitioner

was not taken in custody and on grant of bail in other case he was released on bail. On such surrender, proclamation order of the petitioner ceased to be operative in view of law laid down by this Court in ***Deeksha Puri Vs. State of Haryana : 2013(1) RCR (Criminal) 159***. While granting bail learned Additional Sessions Judge, Panchkula had observed in his order dated 17.12.2012 that the dispute was of civil nature which had been given a colour of criminal offence. The petitioner is no longer proclaimed person. The petitioner is ready to appear before the trial Court and to comply with the terms and conditions to be imposed regarding his appearance before the Court. Therefore, the petitioner may be granted anticipatory bail.

On the other hand, learned State Counsel has submitted that the petitioner misused the concession of bail and absented before the Court twice. The petitioner was declared proclaimed person. There is no reasonable explanation for his long absence before the Court. Therefore, the petitioner does not deserve grant of anticipatory bail and the petition may be dismissed.

In the present case, the petitioner absented during trial and was declared proclaimed person vide order dated 25.07.2017. Although, the petitioner applied for his surrender in the present case and his presence was also recorded through video conferencing but due to negligence/omission on the part of the Court/jail authorities, the petitioner was not in fact taken in custody in the present case. Had it been so the petitioner could not be released on bail on grant of bail in the other case. In any case, even if the proclamation order dated 25.07.2017 be assumed to have ceased to be operative on alleged

surrender by the petitioner in the present case, even then the petitioner, who had earlier misused the concession of bail by absenting from the Court twice during trial leading to the declaration of the petitioner as proclaimed person, again misused the concession of bail by not appearing before the Court in the present case on the date of hearing fixed after his release on bail in the other case.

In ***Lavesh Vs. State (NCT of Delhi) : 2012(4) RCR (Criminal) 240*** Hon'ble Supreme Court observed as under:-

“.....Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled the relief of anticipatory bail.”

In ***Special Leave Appeal (Criminal) No.5385-2020 titled as 'Manish Jain Vs. Haryana State Pollution Control Board' decided on 21.11.2020*** where the petitioner sought anticipatory bail pursuant to cancellation of regular bail granted to him under Section 15 of the Environment Protection Act, 1986 because of his non-appearance, Hon'ble Supreme Court observed as under:-

“A person released on bail is already in the constructive custody of law. If the law requires him to come back to custody for specified reasons, we are afraid that an application for anticipatory bail apprehending arrest will not lie. There cannot be an apprehension of arrest by a person already in the constructive custody of the law. We, therefore, reject the prayer for anticipatory bail.”

In view of the above referred judicial precedents and misuse of concession of regular bail by the petitioner, I am of the considered view that the petitioner does not deserve grant of

anticipatory bail. Therefore, the present petition for grant of anticipatory bail to the petitioner is dismissed.

However, the petitioner is directed to surrender before the trial Court within 10 days from the date of this order. On such surrender, the petitioner shall be at liberty to move application for grant of regular bail before the Court concerned which shall dispose of the same in accordance with law. In case the petitioner fails to do so, the respondent-State shall take requisite steps for his arrest/attachment and sale of his properties.

16.12.2020

Kothiyal

**(ARUN KUMAR TYAGI)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No